

No. 34171-2-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

COREY JAVON WILLIAMS,

Appellant

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

NO. 15-1-01178-6

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. (“The state presented insufficient evidence of a deprivation of property, an essential element of the crime of theft in the second degree.” Br. of Appellant at 1.)

Response: The victim contracted to lease the premises for six months, with an expectation of renting month-to-month thereafter. The victim was denied this opportunity because the defendant did not have any authority to rent the property.

- B. (a) (“The Faretta colloquy was inadequate because the court failed to inform Corey Javon Pugh that technical rules exist which would bind him in the presentation of his case and failed to assure that Mr. Pugh understood the risks of self-representation.” Br. of Appellant at 1.)

Response: The colloquy was adequate; the court did advise the defendant he would be bound by the rules of evidence and advised him of the statutory maximum when the defendant waived an attorney.

- (b) (“The Faretta colloquy was inadequate because the court failed to inform Mr. Pugh of the maximum penalties he faced upon conviction or of the nature and classification of theft in the second degree.” Br. of Appellant at 1.)

Response: The Theft in the Second Degree count was added 11 days before trial. The trial court was under no obligation to conduct another colloquy advising the defendant of the maximum sentence.

- C. (“The court erred in refusing to give the abandonment instruction properly requested by the defense.” Br. of Appellant at 1.)

Response: The defendant did not properly propose such an instruction. If he had, the court properly would have declined to so instruct the jury.

- D. (“The trial court erred in admitting Mr. Pugh’s prior convictions under ER 404(b) without articulating the purpose of their admission, their probative value, and any record regarding their admission.” Br. of Appellant at 1.)

Response: The defendant did not object to the admission of this evidence. It was properly admitted.

- E. (“In the event that the preceding errors alone are not reversible, their cumulative effect denied Mr. Pugh a fair trial.” Br. of Appellant at 1.)

Response: The State disagrees with the premise; there were no errors.

F. (“The trial court exceeded its sentencing authority in imposing restitution when no person suffered any loss.” Br. of Appellant at 2.)

Response: Incorrect. The victim paid a deposit and rent expecting that her daughter would have a lease for an indefinite period of time. Her daughter lost the opportunity for stable housing, living independently, establishing herself in the neighborhood, and improving her credit score.

G. (“The trial court erred in imposing legal financial obligations without considering Mr. Pugh’s current and future ability to pay.” Br. of Appellant at 2.)

Response: The State will agree to strike the non-mandatory LFOs.

H. (“The trial court should have inquired as to Mr. Pugh’s ability to pay the \$200 criminal filing fee under RCW 36.18.020(2)(h).” Br. of Appellant at 2.).

Response: The State disagrees; the \$200 filing fee is mandatory.

II. STATEMENT OF FACTS

Defendant waives right to an attorney and requests to proceed pro se:

There were two Informations filed regarding the defendant: Benton County Number 15-1-01178-6 (CP 1-2), charging one count of Residential

Burglary, and Benton County Number 15-1-01280-4 (CP 34-35), charging Theft of a Motor Vehicle, which is not involved in this appeal. At his arraignment, the defendant stated he wanted to represent himself. RP 12/28/2015 at 3.

The court had the following colloquy with the defendant after he stated that he wanted to proceed pro se:

1 rights?
2 MR. WILLIAMS: I do not.
3 THE COURT: Do you wish to be represented
4 by an attorney in these matters?
5 MR. WILLIAMS: No, I do not.
6 THE COURT: You wish to represent yourself?
7 MR. WILLIAMS: Yes.
8 THE COURT: Sir, you understand that in the
9 2015 cause number ending in 1280-4 the charge there is
10 theft of a motor vehicle.
11 MR. WILLIAMS: I do see that. I also see
12 the Information -- I don't see an Information with a
13 probable cause affidavit attached to this. I think the
14 State has moved a little fast in this. I would like to do
15 a verbal statement of a motion to dismiss based on those
16 facts. I haven't seen anything of probable cause, of what
17 information they have. They just have charges. I wasn't
18 even in the state when the State filed these charges. I
19 turned myself in on Sunday once I found out before the
20 charge and I'm here before you today.
21 THE COURT: Sir, dealing first with cause
22 number ending 1280-4 an affidavit in support of probable
23 cause was filed on the 16th of November. Judge Spanner
24 found probable cause to believe that a crime had occurred
25 and issued a warrant based on that filing. Moving on to

3

COLLOQUY

1 the other matter res burg and that cause number ending in
2 1178-6, that matter the affidavit in support of probable
3 cause was filed in October 20th of this year. Judge
4 Swisher made a probable cause finding and issued the
5 warrant the same day.

6 So to the extent you are making a motion based
7 on the validity of the warrant, that motion is denied.

8 MR. WILLIAMS: Thank you, sir. Does the
9 STATE have any type of probable cause I may see since I
10 represent myself and I haven't seen it?

11 THE COURT: Well, what we will do now is go
12 through the colloquy regarding self-representation. First
13 with respect to the cause number ending in 1280-4 that
14 charge being theft of a motor vehicle, and, counsel, this
15 is a class C felony; is it not.

16 MS. PETRA: No, I believe it's --

17 MR. WILLIAMS: It's a class C, sir.

18 MS. PETRA: I believe it's a B felony.

19 THE COURT: You believe it's a B felony?

20 MS. PETRA: But I do believe it's a B
21 felony.

22 THE COURT: Assuming that it is the greater
23 B felony, sir, you understand it would be punishable by up
24 to 10 years in the Department of Corrections and a fine
25 not to exceed \$20,000?

4

COLLOQUY

1 MR. WILLIAMS: Yes.

2 THE COURT: Sir, you understand if you
3 represent yourself you will be held to the same standards
4 as an attorney?

5 MR. WILLIAMS: Absolutely.

6 THE COURT: You understand you will be held
7 to the same standard as to your knowledge of the law and
8 court rules and the presentation of evidence?

9 MR. WILLIAMS: Yes, sir.

10 THE COURT: All right. Sir, what is the
11 highest grade you completed in school?

12 MR. WILLIAMS: I have three years of
13 college.

14 THE COURT: Are you familiar with the rules
15 of evidence in the State of Washington.

16 MR. WILLIAMS: Yes, I am.

17 THE COURT: Can you tell me how you are
18 familiar with them?

19 MR. WILLIAMS: I studied criminal law and
20 business law at Columbia Basin College.

21 THE COURT: Are you familiar with the
22 Revised Code of Washington? In particular the Revised
23 Code of Washington as it relates to the this charge?

24 MR. WILLIAMS: Yes, I am.

25 THE COURT: Can you tell me how you are

5

COLLOQUY

1 familiar with that?

2 MR. WILLIAMS: I believe that I've had
3 prior 7.8 motions with this prior RCW with another Alaska
4 statute which I fought in the Supreme Court.

5 THE COURT: Supreme Court of which state,
6 sir?

7 MR. WILLIAMS: Washington.

8 THE COURT: And when you say 7.8, you are
9 referring to the Washington Criminal Rule 7.8?

10 MR. WILLIAMS: Yes, sir.

11 THE COURT: And Ms. Petra are you aware of
12 the defendant's range calculation is for this charge.

13 MS. PETRA: For the theft of a motor
14 vehicle doesn't look like Mr. Bloor put that together on
15 that but I can tell you that the defendant has eight prior
16 felonies.

17 MR. WILLIAMS: I would object to that. She
18 has nothing in writing.

19 THE COURT: If you are familiar with that
20 then you understand that in these circumstances dealing
21 with preliminary determinations Evidence Rule 1101 applies
22 and I'm relying on the statement of counsel. Your
23 objection is noted and denied.

24 MS. PETRA: Looks like he has an offender
25 score of 10 with a standard range of 63 to 84 on the theft

6

COLLOQUY

1 of a motor vehicle. I don't show a letter in that matter
2 showing a standard range.

3 THE COURT: All right. Do you have the SRA
4 sheet for the theft of a motor vehicle?

5 MS. PETRA: I do not have the SRA sheet.
6 Just --

7 THE COURT: Given that information, you
8 also understand that residential burglary is a class B
9 felony as well?

10 MR. WILLIAMS: I do.

11 THE COURT: So again subject to the same
12 potential maximum of 10 years or a fine not to exceed
13 \$20,000. You are aware of that?

14 MR. WILLIAMS: Yes, sir.

15 THE COURT: Without agreeing that your
16 criminal history is calculation is correct you heard Ms.
17 Petra's recitation of what the guideline range is believed
18 to be in the State of Washington?

19 MR. WILLIAMS: Let the record reflect that
20 I object.

21 THE COURT: With that in mind, is it your
22 desire to represent yourself?

23 MR. WILLIAMS: Absolutely. As a secured
24 party, I am.

25 THE COURT: And, Ms. Petra, anything

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COLLOQUY

1 further regarding the record for self-representation?

2 MS. PETRA: No, Your Honor.

3 THE COURT: At this time I'm satisfied you
4 are aware of the nature of the charge -- and just to
5 perfect the record again here, sir. You indicated you
6 were aware of the statute with respect to theft of a motor
7 vehicle. Are you also familiar with the Revised Code of
8 Washington and the elements as they relate to residential
9 burglary?

10 MR. WILLIAMS: As a secured party, sir, I
11 am aware and I do object to that.

12 THE COURT: Sir, I will have to ask you
13 what you mean by the term secured party?

14 MR. WILLIAMS: I'm secured party in the
15 State of Washington. My organization is secured party C.
16 Williams LLC. I've been brought before this Court in
17 that the Court is aware of my secured party status.
18 Nothing further.

19 THE COURT: All right. With that said, at
20 this time I'm going to find that you are aware of the
21 nature of the charge. You are aware you will be held to
22 the same standard as would an attorney before the Court.
23 And I will allow you to represent yourself, sir. You
24 understand at any time should you wish to be represented
25 by an attorney you may make such request to the Court and

8

COLLOQUY

1 you will be entitled to representation even if the Court
2 determines that you do not have the funds to retain an
3 attorney the court would have the authority to appoint an
4 attorney for you at no cost to you upon your request. You
5 understand that?

6 MR. WILLIAMS: Yes. May I request full
7 discovery of the State at this time also the probable
8 cause in --

9 THE COURT: You've made your request for
10 discovery. It will be provided in the normal course.
11 Discovery is not always provided at the initial appearance
12 or arraignment. The State also has the ability in
13 particular cases to secret action of material that they
14 believe is appropriate. What I would do is set this
15 matter on the next docket. Is this a Thursday or
16 Wednesday case.

17 MS. PETRA: Thursday.

18 THE COURT: I'll set this on for next
19 Thursday so that discovery can be provided but with that
20 in mind do you wish to proceed to arraignment at this
21 time.

22 MR. WILLIAMS: We can go ahead and weight
23 to the next Thursday. I would like to, if we can,
24 address bail and my status as far as my employment and how
25 the State feels about that.

9

COLLOQUY

RP 12/28/2015 at 3-9.

The court also took other opportunities to advise the defendant of the dangers of representing himself. For example, on January 28, 2016

The court stated:

24 THE COURT: Now, Mr. Williams, you will recall when
25 I -- when we went through a colloquy and I allowed you to

MOTION TO DISMISS

page
12

January 28, 2016

1 represent yourself, I indicated to you that you would be held to
2 to the same standard as an attorney. You would be held to
3 the same standard of knowledge of the law and the same
4 standard with respect to preparation, presentation, and the
5 conduct of the case. I also told you that I could not help
6 you. I'm going to take a little bit of time and explain to
7 you a couple of things now that the case has been argued,
8 hopefully to explain to you what the issue is regarding the
9 motion that's been raised and again to explain to you that I
10 urge you to be represented by an attorney.

RP 01/28/2016 at 12-13.

On February 11, 2016, the Stated filed a second Amended Information (CP 45-47), adding a count of Theft in the Second Degree, and the court stated,

14 THE COURT: Mr. Williams, I would respect-
15 fully submit to you one of the dangers of representing
16 yourself, which is that you can take a legal term of art
17 and turn it into what may seem like a defense, when it
18 may not in fact be a defense.
19 I don't believe that the word "complaining
20 witness", at least from listening to you, has the
21 meaning that you believe it does.

RP 02/11/2016 at 9.

The defendant is known as “Pugh” and “Williams”:

Throughout the pretrial hearings and trial, the defendant claimed his name was Pugh, not Williams. He was known by both names: He had driver’s licenses in both names (Ex. 5; RP 02/16/2016 at 80); the Claim of Lien referred to the C. Williams Group with Corey Pugh as the “commander and controller” (Exs. 8, 10). The court referred to him as “Williams” in the initial appearance on December 28, 2015, and the defendant did not correct this impression. There may be some relevance to the names used by the defendant, but the State will refer to him in this brief by his title, “defendant.”

Trial and substantive evidence, including ER 404(b) evidence:

The following is a timeline of key events:

April 8, 2013, to August 1, 2013: The defendant rented a residence at 1727 W. 15th, Kennewick, Washington, to Megan Dagele. CP 157; RP 02/17/2016 at 102-03. He had obtained a quit claim deed from the

deceased owner's ex-wife. CP 157; RP 02/17/2016 at 102. The defendant pleaded guilty to Theft in the Second Degree. RP at 103.

August 1, 2013: The defendant rented a residence at 803 S. Tweedt, Kennewick, Washington, to a Nicole Bean and her family. CP 157. The property was in foreclosure and the defendant had no ownership interest in it. CP 157; RP 02/17/2016 at 103. The defendant pleaded guilty to Theft in the Second Degree. RP 02/17/2016 at 1-3.

August 4, 2013: The defendant rented a residence at 1921 W. 3rd, Kennewick, Washington, to a Correy Tallman. CP 157; RP 02/17/2016 at 104. The property had been in foreclosure and the legal owner had signed a quit claim deed transferring his interest to the defendant. CP 157; RP 02/17/2016 at 104. The defendant pleaded guilty to Theft in the Third Degree. RP 02/17/2016 at 104.

November 23, 2013: The defendant rented a residence at 520 N. Green, Kennewick, Washington, to Dustin and Amanda Motes. CP 157. The owner had filed bankruptcy and abandoned the house to the mortgage holder; she did not know the defendant. CP 157. The defendant pleaded guilty to Theft in the Second Degree. RP 02/17/2016 at 103.

December 9, 2013: The defendant attempted to rent the property at 1727 W. 15th, Kennewick, Washington, to Dylan Clark. CP 157. The

defendant pleaded guilty to Attempted Theft in the Second Degree. CP 157, 159; RP 02/17/2016 at 102.

December 10, 2013 (approximately): The defendant entered a residence at 5722 W. 15th, Kennewick, Washington. CP 156; RP 02/17/2016 at 101. The residence is owned by the Dominguez family, who reside in Florida. RP 02/17/2016 at 101. The defendant pleaded guilty to Criminal Trespass. RP 02/17/2016 at 101.

He rented this property to a Linda John, resulting in a conviction for Theft in the Second Degree. RP 02/17/2016 at 101-02.

The defendant objected to this evidence only because he was prosecuted under the name of Corey Javon Williams. RP 02/16/2016 at 6.

3 | MR. WILLIAMS: First of all I object to the
4 | evidence that he has actually presented today. I believe
5 | he is aware that I presented evidence as far as actually
6 | my name is Corey Javon Pugh. The State is very familiar
7 | with the evidence that I have presented. I also want to
8 | hand him and the Court and address it, Your Honor, my
9 | motion to dismiss. The State is in violation of
10 | 10.37.050, 6 and 7Crr Rule 2.11 and 2.

RP 02/16/2016 at 6.

September 16, 2015: Defendant filed a Claim of Lien on 523 N. Ely, Kennewick, Washington, as “The C. Williams Group,” listing “Corey Javon Pugh” as “commander and controller.” Ex. 8; RP 02/16/2016 at 85.

September 24, 2015: The Benton County PUD received a request to start utility services at 523 N. Ely, Kennewick, Washington, from “The C. Williams Group. LLC” with “Corey J. Pugh, Commander + Controller” listed as the business contact. Ex. 3; RP 02/16/2016 at 44, 47-48.

Contrary to the PUD policy, the PUD began service to this address, in part based on the defendant’s representation that he owned the property. RP 02/16/2016 at 44, 46.

September 29, 2015: Defendant signed a lease with Krista (Katlyn) Ironbear, as the landlord for 523 N. Ely, Kennewick, Washington. Ex. 1; RP 02/16/2016 at 64-65. Ms. Ironbear’s mother, Laura Gillette, paid the defendant \$1,800.00, which included \$1,000.00 for the first month and a deposit of \$800.00. RP 02/16/2016 at 25. The lease was for six months, followed by a month-to-month tenancy. Ex. 1 at 1; RP 02/16/2016 at 76.

The residence at 523 N. Ely was actually owned by Gail Timmins. RP 02/16/2016 at 58. Ms. Timmins lived in the residence from April 1983 to October 2013. RP 02/16/2016 at 14. After her husband passed away in 2007, she eventually found the house too expensive and left, believing that the mortgage holder would eventually foreclose. RP 02/16/2016 at 14-15. She had never met the defendant, had not allowed anyone to enter the house, and had never heard the names Corey Williams or Pugh. RP 02/16/2016 at 16-17.

October 19, 2015: The State filed an Information against the defendant. CP 1-2.

February 11, 2016: The State filed an Amended Information adding a count of Theft in the Second Degree. CP 45-47.

The jury found the defendant guilty of Residential Burglary and Theft in the Second Degree. RP 02/17/2016 at 150-53.

III. ARGUMENT

A. Response to Defendant’s Argument Number 1 (“The State presented insufficient evidence to sustain a conviction for theft, as no party suffered any loss.” Br. of Appellant at 12.):

1. *State v. Lee* is not applicable because that case dealt with the lease of property for a specific number of days, not a month-to-month tenancy.

In *State v. Lee*, 128 Wn.2d 151, 904 P.2d 1143 (1995), the defendant rented a house he did not own to the Red Cross from June 28, 1992, to July 28, 1992. The Red Cross in turn provided emergency housing to a couple whose apartment was damaged in an arson. 128 Wn.2d at 153-54. The *Lee* court held that the Red Cross or tenants got exactly what they bargained for. *Id.* at 163. The court stated that while Mr. Lee’s actions may constitute theft, the State did not present sufficient evidence to establish he deprived anyone of \$250 or more in either cash or rental value. *Id.* at 164.

Contrast that situation to this. Here, Katlyn Ironbear was transitioning from jail to treatment house to her own residence. RP at 24, 29. She signed a lease for a minimum of six months, followed by a month-to-month tenancy. Ex. 1. She and her mother were bargaining with the defendant for a residence with some permanency, a residence where Ms. Ironbear could stay for at least six months and possibly for years thereafter. Ms. Ironbear could improve her credit score by making regular rent payments. She could also meet neighbors and, presumably, would not be in the drug world. This is unlike the situation in *Lee* where the victims rented an apartment for a specific 30-day period only.

Also, the *Lee* court emphasized that no one was actually hurt by the defendant's actions. 128 Wn.2d at 163. The actual owner allowed the Red Cross tenants to stay at the residence and did not attempt to evict them. *Id.* Here, the defendant was charged and arrested within one month of signing the lease with Ms. Ironbear. CP 1-2. Her unlawful tenancy was discovered well before the initial six months of the lease expired.

Finally, in the recent case of *State v. Farnworth*, COA No. 33673-5-III, WL 2378168 (June 1, 2017), is helpful. That court held that the value of property, for purposes of the theft statute, is the total value of property relinquished by the victim regardless of whether the victim received some offsetting value in exchange. *Farnworth*, No. 33673-5, WL

2378168 at *22. “The legislature did not intend an inquiry into the thief’s net gain or the victim’s net loss. In deception cases [and the defendant herein was charged with Theft by Deception] the statute looks only to the value of the property obtained, not the net result of the exchange.” *Id.* at *9 (citing *State v. George*, 161 Wn.2d 203, 209, 164 P.3d 506 (2007)). In *Lee*, the defendant was charged with Theft by “wrongfully obtain” or “deception.” *Farnworth*, No. 33673-5, WL 2378168 at *10.

In this case, Ms. Gillette paid the defendant \$1,800.00 to help her daughter obtain a lease of at least six months, followed by month-to-month tenancy. The defendant obtained that money by deceiving her to believe that he had an ownership interest in the property. The jury correctly found him guilty.

B. State’s Response to Defendant’s Argument Number 2 (“Mr. Pugh’s waiver of counsel was not knowing, voluntary, and intelligent.” Br. of Appellant at 16.):

1. The defendant has a constitutional right to represent himself, and the standard on review is abuse of discretion.

Criminal defendants have the explicit right to self-representation under the Washington Constitution, article I, section 22, and an implicit right under the Sixth Amendment to the U.S. Constitution. *State v. Madson*, 168 Wn.2d 496, 503, 229 P.3d 714 (2010). When a defendant requests pro se status, the trial court must determine whether the request is

unequivocal and timely. *State v. Stenson*, 132 Wn.2d 668, 737, 940 P.2d 1239 (1997). The court must then determine if the defendant's request is voluntary, knowing, and intelligent. *Madson*, 168 Wn.2d at 504.

A denial of the right to proceed pro se is reviewed under an abuse of discretion standard. *Id.*

No matter what a trial court does when a defendant requests to proceed pro se, the decision will be questioned. Deny the request, and the defendant on appeal will argue that his right of self-representation was denied. *See Madson*, 168 Wn.2d 496. Approve the defendant's request, and the defendant on appeal will argue that the colloquy was inadequate, as the defendant has done in this case.

2. The defendant's request for pro se status was both timely and unequivocal and should be viewed in context with his 2013 charges when he was represented and resulted in convictions on seven counts.

The defendant stated he did not want an attorney and wanted to represent himself at his arraignment. RP 12/28/2015 at 3. His determination to proceed pro se was never shaken, although the court urged him to be represented by an attorney in the hearing on January 28, 2016 (RP 01/28/2016 at 13), and February 11, 2016 (RP 02/11/2016 at 9).

The defendant's steadfastness in self-representation should be viewed in the context of what happened to him in 2013. RP 02/17/2016 at

101-04. He had an attorney and ended up pleading guilty to one count of Criminal Trespass, four counts of Theft in the Second Degree, one count of Attempted Theft in the Second Degree, and one count of Theft in the Third Degree. The defendant may have concluded that he could have done as well as an attorney in the 2015 cases.

3. The colloquy to ensure that his waiver was knowing, voluntary, and intelligent was adequate.

The colloquy on December 28, 2015, covered the following:

- That Residential Burglary is a Class B felony punishable by up to 10 years in prison and a fine of \$20,000.00. RP 12/28/2015 at 7, ll. 7-13.
- That the defendant would be held to the same standards as an attorney. RP 12/28/2015 at 5, ll. 2-5.
- That the defendant stated he was familiar with the rules of evidence in the State of Washington through criminal law and business law classes at Columbia Basin College. RP 12/28/2015 at 5, ll. 14-20.
- That he is familiar with the Revised Code of Washington regarding the charge. RP 12/28/2015 at 5, ll. 21-24.

The court further advised the defendant on January 28, 2016, that he would be held to the same standard as an attorney regarding knowledge

of the law, among other things. RP 01/28/2016 at 13. Also, on February 11, 2016, the court again advised the defendant of the dangers of representing himself. RP 02/11/2016 at 9.

This colloquy met the requirements of *Faretta v. California*, 422 U.S. 806, 819, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975).

The defendant argues on appeal that the trial court did not inform him of the statutory maximum for Theft in the Second Degree. True, but the Amended Information alleging Theft in the Second Degree was not filed until February 16, 2016. At that point, the defendant had waived an attorney and had been representing himself. The trial court did not need to conduct a second colloquy after another charge is added to an Information. *State v. Modica*, 136 Wn. App. 434, 444-45, 149 P.3d 446 (2006).

Also, the defendant had pleaded guilty to four counts of Theft in the Second Degree just two years earlier. He knew the maximum penalty for that charge.

C. State's Response to Defendant's Argument Number 3 ("The court failed to properly instruct the jury by refusing to give an abandonment instruction." Br. of Appellant at 23.):

1. Abandonment is not a defense to Residential Burglary.

As stated in *State v. Olson*, 182 Wn. App. 362, 377, 329 P.3d 121 (2014), "the defense of abandonment applies only to the crime of criminal

trespass. The legislature did not provide the statutory defense of abandonment as a defense to residential burglary.”

2. The defendant failed to properly propose the instruction by putting it in writing.

The procedure for proposing jury instructions is set forth in CrR 6.15(a). “Proposed jury instructions shall be served and filed when a case is called for trial by serving one copy upon counsel for each party, by filing one copy with the clerk, and by delivering the original and one additional copy for each party to the trial judge.” CrR 6.15(a). The defendant filed many motions through the course of the proceedings. There is no reason he could not have complied with this rule. The defendant’s verbal statement that he would rely on an abandonment defense does not meet the requirements of this rule.

D. State’s Response to Defendant’s Argument Number 4 (The trial court erred in admitting Mr. Pugh’s prior convictions.” Br. of Appellant at 32.):

1. The defendant did not object to the admission of his convictions.

In response to the State’s Motion to admit some of the defendant’s prior convictions under ER 404(b), the defendant said:

3 | MR. WILLIAMS: First of all I object to the
4 | evidence that he has actually presented today. I believe
5 | he is aware that I presented evidence as far as actually
6 | my name is Corey Javon Pugh. The State is very familiar
7 | with the evidence that I have presented. I also want to

RP 02/16/2016 at 6. The defendant then changed subjects and stated,

7 | with the evidence that I have presented. I also want to
8 | hand him and the Court and address it, Your Honor, my
9 | motion to dismiss. The State is in violation of
10 | 10.37.050, 6 and 7Crr Rule 2.11 and 2.

RP 02/16/2016 at 6. When the court redirected him, the defendant stated,

13 | MR. WILLIAMS: Okay. I don't feel that the
14 | State should be able to bring in any type of this evidence
15 | because the State has not produced that I am Corey J.
16 | Williams.

RP 02/16/2016 at 6.

Since the defendant did not object to the admission of the ER 404(b) evidence on a substantive basis, the trial court did not engage in an analysis of determining the purpose of the evidence, the relevance, and weighing the prejudice against the probative value suggested in *State v. Lough*, 70 Wn. App. 302, 853 P.2d 920 (1993).

2. **If the defendant had objected, the defendant's prior convictions, just two years earlier, for entering residences he did not own and renting them to unsuspecting tenants, were admissible under ER 404(b).**

The standard on review for a trial court's evidentiary ruling is abuse of discretion. *State v. Slocum*, 183 Wn. App. 438, 449, 333 P.3d 541 (2014).

The trial court's failure to articulate its balancing process on the record does not make admissible evidence inadmissible. If the reviewing

court can decide issues of admissibility without the aid of an articulated balancing process on the record, the court will do so. *State v. Gogolin*, 45 Wn. App. 640, 645, 727 P.2d 683 (1986).

From 2013 through 2015, the defendant had a scheme to unlawfully enter residences, make some claim that he was the owner of the premises, and then rent the property to an unsuspecting tenant. To be admissible as a common scheme or plan under ER 404(b), the prior bad acts must be markedly similar to the acts in question. *State v. DeVincentis*, 150 Wn.2d 11, 21, 74 P.3d 119 (2003).

In this case, the trial court did not abuse its discretion in allowing the defendant's prior convictions to be introduced. In both the 2013 cases and the cases herein, the defendant had a common scheme or plan to steal from individuals by posing as a landlord and renting to unwitting tenants.

E. State's Response to Defendant's Argument Number 5 ("If the trial court's errors alone do not warrant reversal, their cumulative effect does." Br. of Appellant at 36.):

There were no errors.

F. State's Response to Defendant's Argument Number 6 ("The trial court exceeded its sentencing authority when it imposed restitution." Br. of Appellant at 37.):

Ms. Gillette wanted to help her daughter transition from a drug treatment house to her living independently in an apartment. An apartment would have given her daughter some permanence, would have helped her

daughter improve her credit score, and would have given her the responsibility of tending to the residence herself. Her daughter, Ms. Ironbear, lost all of these opportunities via the defendant's scam.

Ms. Gillette paid the defendant \$1,800.00 to rent property in which he had no ownership interest and it was appropriate for the trial court to order the defendant to pay her back.

G. State's Response to Defendant's Argument Number 7 ("The trial court exceeded its sentencing authority in failing to consider Mr. Pugh's current and future ability to pay before imposing legal financial obligations." Br. of Appellant at 38.):

The court imposed \$357.56 in non-mandatory legal financial obligations (LFOs): the Sheriff's service fee of \$60, the jury demand fee of \$250, and the witness fees of \$47.56. CP 152. The State agrees to strike those LFOs.

H. State's Response to Defendant's Argument Number 8 ("The \$200 criminal filing fee is not mandatory." Br. of Appellant at 40.):

This is a mandatory fee. *State v. Lundy*, 176 Wn. App. 96, 103, 308 P.3d 755 (2013); RCW 36.18.020(2)(h).

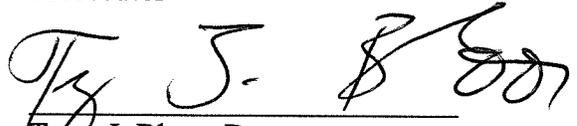
IV. CONCLUSION

The defendant's conviction should be affirmed. The non-mandatory LFOs should be stricken, but the other LFOs, including the restitution and filing fee, should remain.

RESPECTFULLY SUBMITTED this 14th day of July, 2017.

ANDY MILLER

Prosecutor

A handwritten signature in black ink, appearing to read "TJ Bloor", written over a horizontal line.

Terry J. Bloor, Deputy

Prosecuting Attorney

Bar No. 9044

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