

NO. 34437-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Respondent,

v.

GABRIEL S. SANDOVAL,

Appellant.

BRIEF OF RESPONDENT

David B. Trefry WSBA #16050
Senior Deputy Prosecuting Attorney
Attorney for Respondent

JOSEPH A. BRUSIC
Yakima County Prosecuting Attorney
128 N. 2nd St. Rm. 329
Yakima, WA 98901-2621

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant sets forth four assignments of error. These can be summarized as follows;

1. The trial court erred when it found sufficient evidence to support the jury's finding that Appellant committed First Degree Robbery.
2. The trial court erred when it found sufficient evidence to support the jury's finding that Appellant possessed a firearm, which resulted in convictions for First Degree Unlawful Possession of a Firearm and Possession of a Short-Barreled Shotgun.

B. ANSWERS TO ASSIGNMENTS OF ERROR.

Appellant lists two assignments of error, they both are challenges to the sufficiency of the evidence presented by the State.

- 1-2. There was sufficiency evidence presented by the State for the jury to find, beyond a reasonable doubt, that Sandoval committed Robbery in the First Degree as well as First Degree Unlawful Possession of a Firearm and Possession of a Short-Barreled Shotgun.

II. STATEMENT OF THE CASE

The State has set out a long and detailed statement of facts in this case, far longer than most cases. This was done because Appellant's statement of facts is riddled with argument.

Adan Maravilla was friends with both the Defendant and the victim. He had gone to school with both of them. He testified that he was friends with both of the other two men. He identified the defendant

in open court. RP 324-5. Maravilla knew all of three of the Sandoval brothers and at times in his testimony confused their names. RP 328-9, 330-31.

He testified that he became involved in this case when the victim, Mr. Ryan Miller came to his house to hang out. RP 325. There was eventually agreement to take Nelly and Gabriel Sandoval to the casino. He also stated that he and the Miller had smoked meth before the robbery. RP 326-7. When they arrived at the casino Nelly got out of Miller car and left her brother sitting there. Maravilla was surprised that Nelly would leave her brother. Gabriel asked Miller and Maravilla for some money but they had none. RP 330-31. Miller and Maravilla then took Sandoval to his home. Maravilla had asked to be dropped off first but Miller told him no, that they were going to take the Defendant home first. RP 331-32.

After Miller drove them to the Sandoval's house Sandoval told Miller to pull farther down the driveway so that the neighbors would not see them smoking dope. RP 332-3.

Maravilla testified that after they had stopped and sat for a bit, Sandoval got out of the car and went around to the driver's side and attempted to pull the keys out of the ignition. Maravilla testified that he was in the back seat at this time. Sandoval's sudden action of taking the keys from the ignition surprised Maravilla and he stated to Sandoval "You

got to be fucking kidding me, bro, if you're going to, like, actually take off with the keys and shit." RP 332.

All of the occupants of the car were now out of the car and it was at this time that Maravilla first saw the gun and Sandoval struck Miller in the face with the gun and when Maravilla challenged Sandoval he was told shut up. Miller was imploring Maravilla to help him fight Sandoval but Maravilla did not help. He did observe that Miller and Sandoval were struggling over the gun and Miller had grabbed onto the barrel of the gun. Maravilla testified that he did not help because he did not want to get shot and because he knew that Miller was much bigger and would win the fight. RP 333-34.

During this time Maravilla called 911. He did this anonymously because he did not want to become involved with what was going on but felt that he should help Miller. Sandoval told Maravilla that if he was not going to "pay the debt, well, get the fuck out of here." RP 336-37. Maravilla went about three or four houses down and hid. PR 337.

Maravilla described the gun as about two feet long and "like a shotgun, like a rifle kind of type, a short gun. RP 341-2.

On cross examination Maravilla testified that the defendant exited the back of the victim's car walked around to the driver's side opened the door and reached in taking the keys. The victim stated "what are you

doing?” but the defendant was able to get the keys away from the victim and out of the ignition. The victim exited the car and it was outside the car that the fight/assault heated up and the victim was hit in the head with the sawed off shotgun. Maravilla testified that at one point the defendant and the victim both had their hands on the gun. (RP 355-6) Maravilla’s testimony was the fight went on for some time. RP 358. Maravilla testified that after Sandoval pulled the keys from the car he ordered the victim out of his car. It was at that time that Maravilla also exited the car. RP 359. Maravilla testified that he observed the victim being hit with the gun. RP 359.

On redirect Maravilla confirmed that his statement to the police was correct, that the defendant had the gun in his hands when he got out of the car and had it in his hands as he approached the victim who was seated in the car. That Sandoval was the person who had the gun first. Maravilla confirmed that he observed Sandoval hit the victim in the face with that gun. RP 361

On re-cross Maravilla again confirmed that Sandoval had the gun, that he hit the victim with that gun and that the victim was holding on to it “so he doesn’t get hit again.” RP 363.

This is the final portion of Maravilla’s testimony:

Q. And just to clarify, you testified that you first saw

Mr. Sandoval with the gun and strike Ryan and then Ryan grab the gun to stop him from hitting him again; is that correct?

A. Yep. What I saw, that's what I saw. Can I give, like, an example, like, with this shit?

Q. You can show us, sure is?

A. Shorty is like this. (Inaudible).

...

A. Shorty has the pistol like -- and talking shit to Ryan and like, "You better pay up, you fucking bitch. Widdy widdy woo woo (phonetic)."

And Ryan's like, "I don't -- I don't know what you're talking about."

And as soon as he said that, Gabriel's like, bang, just like hits him, like, pretty hard on his face on his right-hand side, I think it was. But when he gets that hit, Ryan, like, puts his hands on top -- on his gun, on the rifle. And that's when he was asking me to help him. I mean, I wasn't going to fucking help him. He's a big guy. He's -- he's -- Gabriel is asking for some money, and Ryan didn't have no money. He could have, like, worked out something, but he just didn't want to work out nothing, I guess. So that's why Gabriel hit him.

And I'm like, "Hey, wait. Just let -- let him go away."

And he tells me, "Adan, are you going to pay his debt?"

I was like, "No." RP 364-5.

The victim, Mr. Miller, testified that on the night of the robbery he was looking for a friend and had enlisted Mr. Maravilla in that search. RP 538-42. He was driving his car a Black 2005 Mercury Montego. RP 539-40. One of the places that they stopped was at "Nelly's" house on Date road. Nelly is Ms. Sandoval. RP 542-544. At that house Adan Maravilla went into the home and was there for approximately 20 minutes.

Maravilla then came out with Nelly and the defendant and asked Mr. Miller if he could give Nelly and “Shorty” a ride to the casino. RP 545.

Miller testified that he agreed to give them a ride to the casino. Maravilla got back into the front seat as before and Nelly and Shorty got into the backseat. RP 544-5. Miller identified the person whom he knew as Shorty as the defendant, Gabriel Sandoval who was seated in the courtroom. RP 545-6.

Once they arrived at the casino Miller testified that an argument occurred regarding a loan of some money to the Appellant. The initial argument was between the defendant and his sister. RP 546. Miller testified that Sandoval was upset that he was going to have to walk back to his house or find some other way home. Miller told Sandoval that he would give him a ride. RP 546-7. He testified that Adan Maravilla was still in the “passenger-side driver” and Sandoval got back in behind Maravilla. RP 547. Miller testified that he didn’t want Sandoval in his car alone and that he wanted Maravilla with him. RP 548-9. On the way to take Sandoval home they all stopped at Maravilla’s house for about fifteen to twenty minutes. During that time Sandoval remained in the car still seated in the rear passenger seat. RP 552.

Mr. Miller’s testimony at this time is that Sandoval had changed places in the car when Maravilla got back into the car. At this time

Sandoval was in the front passenger seat of Miller's car and had borrowed Miller's phone and was doing something with it. RP 552. Miller testified that he drove to Nelly Sandoval's home at 501 North Date and pulled into the driveway. Miller testified that Sandoval asked him if he would "jump" one of the cars at that home. He refused to do that. RP 553-4. It was just after this refusal that Sandoval handed Miller his phone back and "yanked (his) keys out of the ignition while (his) car was still running." RP 556. He testified that as this was occurring Sandoval had opened the car door and had pulled out what looked to be a "2-inch sawed-off shotgun" and told Maravilla who was trying to get into the front seat to "Get the fuck out of the way – it has nothing to do with you – or I'm going to shoot you" and he proceeded to point the gun at Miller telling him that he had "fucked up." RP 555-6.

Miller testified that he told Sandoval that he was sorry and didn't know what he had done wrong and that he would go jump one of the cars. He stated that he could not believe, couldn't fathom why someone would do that. RP 556.

Miller testified that Sandoval ordered him out of his car and while still pointing the shotgun at Miller walked around the car to where Miller was standing. Sandoval then hit Miller in the head with the shotgun. Miller testified that he thought that he was going to get killed and "it was a

dream.” RP 557-8. After Sandoval hit Miller in the head with the shotgun Sandoval told Miller that he was “[d]on’t lie to me, you punk motherfucker. You’re going to suck my dick.” The verbatim report of proceedings in this portion states that Miller began to cry and testified once again that it was like a dream, that who the hell in their right mind would do something this this, that he could not believe what was happening. RP 558-9.

Miller testified that Sandoval moved his hands in such a way that he would not have been able to fire the gun so Miller grabbed the barrel and started to struggle telling Sandoval to just give him his keys and he would go home. RP 562, 573-4. Miller testimony describes that the two continued to struggle over the gun, with Miller continuing to be struck by Sandoval and at one point being tripped. Miller continued to hold onto the gun and fight to keep holding onto the gun yelling for help, screaming help. RP 563-4. Miller said that Maravilla was still there at that time and he yelled at him to help but Maravilla did nothing. The fight continued down onto and even down the road. RP 564-5.

At some point Miller was able to rip the gun from Sandoval’s hands but at that time Sandoval pulled out what appeared to be a knife or a pick and started swinging it at Miller. RP 555-6. Miller testified that he was

almost certain that it was not a knife but could have been an ice pick or a screwdriver. RP 569-70

Miller then testified that Sandoval calmly went to Miller's car, shut the passenger side door, got into the car rolled down the window, started the car and backed up to him telling him that he, Miller had messed up, that he should get back into the car, that he has Miller on camera. Miller testified that it made no sense. RP 570-2 Miller testified that Sandoval said a bunch of stuff that he didn't and still does not understand, Miller posited that Sandoval thought that he, Miller, was someone else, that he even then still did not get or understand what Sandoval was saying to him. RP 570-1.

It was just after this that Miller heard a policeman coming and he laid down the shotgun and walked towards the policeman with both of his hands raised. RP 572-3.

Miller was shown and identified pictures of the sawed-off shotgun as well as a picture of his knee that he described as "chewed up by the asphalt from fighting with this guy for about 20 minutes..." RP 574.

Miller testified that he did not want to go with the police and did not want medical aid because Sandoval had his car with all of the information about where he lived and he wanted to get home to his wife and kids to make sure they were all right. RP 578-9.

On cross examination Miller was grilled about the times that he had stated in the various statements and interviews. He stated that the reason that they varied was that he was not certain because he had had a gun pointed at him, he was struck with the gun and he just did not keep track of the time that evening while he was being assaulted and robbed. RP 677-9

Mr. Miller testified that on the night he was robbed he had smoked marijuana. RP 680. That he had fought with Sandoval, had been hit in the head with the gun. He testified that he and Sandoval fought for about 20 minutes and that during the fight Miller had ahold of the barrel of the gun. RP 687-9. Mr. Miller testified that the fight started at Sandoval's house and ended three houses down the street in a grassy area beside the road that should have sidewalk but didn't. RP 697. Mr. Miller confirmed that at the end of the fight Sandoval took out a weapon, a shank, and tried to shank Mr. Miller. RP 697-8. Miller confirmed that he had at one point after he pulled the gun from Sandoval's hands, opened the breech and observed that there was no shell in the gun. RP 699-701.

Officer Shah was one of the first officers to arrive at the scene. She made contact with the victim Mr. Miller. Her testimony was that the victim was kind of frantic with blood on this face, neck and clothing and that the injury from which the bleeding was coming was "obvious." His

injury was to his head and the blood was coming down across his face to his neck and throat area. RP 184-5. Miller made contact with Officer Shah around 501 North Date Road. RP 185. Miller was upset because someone had taken his car, stating to the officer "He took my fucking car." RP 185. Miller pointed out to the officer a sawed-off shotgun that was down on the ground. He, in this agitated state, told this officer that the person who had taken the car was "Shorty" and that Shorty "was Rudy Sandoval's brother and that he lives with Nelly or Nellita (phonetic) Sandoval up the street."

Officer Shah was shown two exhibits, which showed the injuries to Miller, she testified that he had a large knot, a hematoma on his head. Miller, still in his frantic state, told the officer that the injury had been inflicted on him by the same person, Shorty, who had taken his car. Other exhibits identified by this officer showed the injuries to Miller's knees that he told her he had sustained when he was struggling with Shorty as well as the sawed-off shotgun that was seized from the scene of this crime. PR 189-90.

Miller signed a stolen vehicle report with this officer and that report was then entered into a computer system that alerts officers if they run the license plate of a vehicle that has been assigned as stolen by the owner RP 194. Officer Shah also requested that dispatch start a search

for someone who would match the “Shorty” nickname who was associated with Nelly and Rudy Sandoval. There was a match, Andreas Sandoval and a photomontage was created. RP 196

This officer again testified that when she encountered Mr. Miller he had scratches on his hands and his face. RP 238-9. She also testified that she saw two screwdrivers that fit Miller’s description of the weapon, a “shank” that the defendant had threatened him with. RP 204, 233-4

Det. Dunsmore recovered two screwdrivers from the passenger side floorboards of the victim’s car. This was tested by the Washington State Patrol Crime Lab and found to have the defendant’s DNA on it. RP 481-2. The detective testified that he had questioned the victim regarding these screwdrivers and Mr. Miller stated to the officer that they were not his and the detective also was aware that Miller had stated that Appellant had tried to “shank” Mr. Miller. The detective testified that a screwdriver could be considered a “shank.” RP 499-500. Mr. Miller stated to this detective that the shank had a sharp point like an ice pick or a chainsaw file. RP 509=8

Mr. Miller, the victim, told Det. Dunsmore that the person who had robbed him and stolen his car was Rudy Sandoval’s brother who lived with Nelly Sandoval and the perpetrator’s nickname was “Shorty.” RP 455-6. Mr. Miller was initially shown a photomontage that contained a

picture of Appellant's brother, Andreas Sandoval. Mr. Miller stated to the detective that the photo of Andreas looked a lot like the person who had robbed him but he, Mr. Miller could not identify Andreas as the person who had robbed him. RP 490-1.

Det. Dunsmore also collected the sawed off shotgun and took pictures of the weapon. He also, as a portion of the investigation, measured that weapon and took photographs with a tape measure up against the weapon. The testimony was that the shotgun had been cut down to the point that it was only 20.5 inches long. RP 495-6. Miller also told the officer that he and the defendant had fought over the shotgun. RP 515.

Det. Dunsmore was asked by Sandoval's trial counsel about the Miller's injuries. The detective testified that Miller had a "huge goose egg" with a cut or laceration in that wound as well as one to his lip and his knees. RP 505, 516

III. ARGUMENT

While every defendant has the absolute right to remain silent and the jury was instructed that the fact that Sandoval did not testify cannot be used against him the fact remains that the State's testimony in this case was not refuted. Sandoval's counsel and the State elicited testimony from the only two other people who were present at the scene and while it is true the testimony was not identical, the two witnesses were clear that the

robbery had occurred and that Sandoval was the person, to quote his counsel, "brought a gun to a fistfight." RP 748

In a case such as this it is essential remember that the rule of law that sets out that credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). And that "It is axiomatic in criminal trials that the prosecution bears the burden of establishing beyond a reasonable doubt the identity of the accused as the person who committed the offense." State v. Hill, 83 Wn.2d 558, 560, 520 P.2d 618 (1974).

Response to allegation 1 – Sufficiency of evidence – Robbery in the First Degree

Without a doubt, the testimony of both Mr. Miller and Mr. Maravilla established that Sandoval was the person who committed this crime and it was Sandoval who brought the gun to the fist fight. In closing Sandoval attempted to shift the commission of this crime onto Maravilla's shoulder's based on the alleged mystery of how the gun suddenly appeared. But the unrefuted facts presented are that this was a sawed off shotgun that was twenty or so inches long in totality. The very reason for this type of alteration of this type of gun is so that it can be easily concealed which is obviously what Sandoval did.

The review of a question of sufficiency of the evidence is well

settled law and in this type of claim the party challenging the sufficiency must admit the truth of the State's evidence and all reasonable inferences drawn in favor of the State, with circumstantial evidence and direct evidence considered equally reliable. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The elements of a crime can be established by both direct and circumstantial evidence. State v. Brooks, 45 Wn. App. 824, 826, 727 P.2d 988 (1986). One is no less valuable than the other. There is sufficient evidence to support the conviction if a rational trier of fact could find each element of the crime proven beyond a reasonable doubt.

State v. G.M.V., 135 Wn.App. 366, 374, 144 P.3d 358 (2006)

“Whether she possessed the gun is a question of fact. State v. Roberts, 80 Wn.App. 342, 353-54, 908 P.2d 892 (1996). The evidence is sufficient to support a finding of guilt if a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, accepting as true the State's evidence and all reasonable inferences to be drawn from it. State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993) (citing State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).”

The facts presented to the jury in this case were without a doubt sufficient to meet the test set forth in, State v. Bucknell, 183 P.3d 1078,

1080 (WA 2008) “In reviewing a sufficiency of the evidence challenge, the test is whether, after viewing the evidence in a light most favorable to the jury's verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-21, 16 P.2d 628 (1980).”

State v. McDaniel, 155 Wn.App. 829, 230 P.3d 245 (2010) " Analytically, flight is an admission by conduct. Evidence of flight is admissible if it creates ‘a reasonable and substantive inference that defendant's departure from the scene was an instinctive or impulsive reaction to a consciousness of guilt or was a deliberate effort to evade arrest and prosecution.’ (Citations omitted.)

Sandoval attempts to parse this crime into small sections arguing that because the keys were taken from the possession and/or presence of Mr. Miller that is the only thing that was subject to a possible robbery charge. First of all, it is possible to commit robbery by taking a set of keys, the item that was the object of this crime is in many ways immaterial. The State is punishing the defendant for an act that meets the definitions of robbery and if the item to be taken is a key or a nickel or a spaceship is not the question. The question is; has the State proven each of the elements of the crime as the State did in this case?

Further Sandoval would have this court rule that because a victim

fights the perpetrator and in the defense of him or herself ends up away from the actual item that is eventually taken that that is not a robbery. That because the victim is now physically separated from the object the criminal was trying to take that there is now a legal impossibility for that item to be part of the factual basis supporting a charge of robbery. Clearly that is not the intent of the law.

Further, this was an ongoing act on the part of Sandoval. This criminal act did not start and stop. The initial action by Sandoval of taking the keys from Miller's car was just a part of this ongoing robbery. It would be no different than a robber walking into a convenience store and taking some items before they went to the counter with their saw-off shotgun and demanded cash from the clerk. The robbery in the convenience store does not stop when the items are taken by force, the crime stops when the perpetrator flees the scene.

State v. Richie , 191 Wn.App. 916, 365 P.3d 770 (2015), "The essential elements of the crime are those that the prosecution must prove to sustain a conviction. State v. Peterson, 168 Wn.2d 763, 772, 230 P.3d 588 (2010). In determining the essential elements, we first look to the statute. State v. Mason, 170 Wn.App. 375, 379, 285 P.3d 154 (2012). ...In 1909, the Supreme Court stated that robbery included an element that " the property must be taken from the person of the owner, or from his

immediate presence, or from some person, or from the immediate presence of some person, having control and dominion over it." State v. Hall, 54 Wash. 142, 143-44, 102 P. 888 (1909).”

The court in State v. Tvedt, 153 Wn.2d 705, 711, 107 P.3d 728 (2005) addressed the unit of prosecution for robbery, “Under the plain language of the statute, the crime of robbery requires that there be a taking of property and that the taking be forcible and against the will of the person from whom or from whose presence the property is taken. By describing the crime of robbery as it did, the legislature established an offense which is dual in nature--robbery is a property crime and a crime against the person.”

The Tvedt court went on to reject the course of conduct for the unit of prosecution, this is what Sandoval alleges. The taking of the keys as one unit and the car another, the second being separated by some time and the distance the fight covered. Id. 714. The court’s final determination was “Accordingly, the unit of prosecution for robbery is each separate forcible taking of property from or from the presence of a person having an ownership, representative, or possessory interest in the property, against that person's will.” Id. 714-5.

In this case there was one count of robbery, the forcible taking, from the presence of Mr. Miller, of his car. 'Robbery encompasses any

taking of... property [that is] attended with such circumstances of terror, or such threatening by menace, word or gesture as in common experience is likely to create an apprehension of danger and induce a man to part with property for the safety of his person. "' State v. Witherspoon, 180 Wn.2d 875, 884, 329 P.3d 888 (2014)

Sandoval's argument that this act was not in the presence of Miller was addressed in State v. Manchester, 57 Wn.App. 765, 768-9, 790 P.2d 217 (1990), "The word "presence" in this context has been defined as a taking of something "so within [the victim's] reach, inspection, observation or control, that he could, if not overcome with violence or prevented by fear, retain his possession of it." (Footnote omitted.) 4 C. Torcia, *Wharton's Criminal Law* § 473 (14th ed.1981). Manchester goes on to state:

The fatal flaw in Manchester's argument is that it ignores the plain language of the statute: "force or fear ... used to ... retain possession of the property, or to prevent or overcome resistance to the taking ..." In each instance, it is undisputed that Manchester used force to retain at least some of the stolen property. In doing so, his actions fall squarely within the provisions of the statute. Based on a robbery statute that is substantially similar, the Oregon courts reached the same conclusion when faced with equivalent facts. See *State v. Tolson*, 24 Or.App. 657, 546 P.2d 1115 (1976); *State v. Rios*, 24 Or.App. 393, 545 P.2d 609 (1976).
Id. at 769.

The Manchester court concludes "The majority of jurisdictions

favor a transactional view that does not consider the robbery complete until the assailant has effected his escape. Because this approach does not follow the common law, courts focus on the language in robbery statute to reach this result. ... The broader transactional view comports with the current Washington robbery statute.... This change indicates the Legislature's intent to broaden the scope of taking, for purposes of robbery, by including violence during flight immediately following the taking. Id. 770-71. (Citations omitted.)

Response to allegation 2 – Sufficiency of evidence - Unlawful possession of a firearm and possession of a short barreled shotgun or rifle

The State will not reproduce, in totality, the law that is cited above regarding sufficiency of the evidence.

There was unrefuted testimony that Sandoval was in possession of the sawed-off shotgun. The intimation posited by Sandoval in the trial was that perhaps Mr. Maravilla had the shotgun. Now on appeal it is that it was a magic trick or that Miller had it with him and he pulled it on the Defendant. There is literally nothing in the record to support this theory.

As this court is more than aware, when reviewing a challenge to the sufficiency of the evidence, this court will view the evidence in a light most favorable to the State to determine whether any rational trier of fact could have found the essential elements of the charged crime beyond a

reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). A defendant claiming insufficiency admits the truth of the State's evidence and all reasonable inferences drawn in favor of the State, with circumstantial evidence and direct evidence considered equally reliable. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The fact that the testing of the weapon did not have DNA on it that would allow testing is nothing. It was considered by the jury and they determined that the State had presented evidence through Miller and Maravilla to find that Sandoval had possessed this illegal weapon beyond a reasonable doubt. The State has attached one of the pictures of this weapon in Appendix A, as the court can see this weapon would not be difficult to hide.

The Appellant argues here that the gun just magically appeared. The facts show that the clothing that was worn by the defendant could have easily concealed this saw-off shotgun.

Mr. Miller:

Q. Okay. What was he wearing that night?

A. It seemed to be –

Q. Mr. Sandoval, let me clarify.

A. It seemed to be a blue jumpsuit, like a mechanic's outfit.

RP 547

Mr. Maravilla;

Q. Okay. What was the -- Mr. Sandoval wearing? Can you describe...

A. Wearing like some overall kind of type with a jacket.

Q. Prior to him getting out of the car and striking Mr. Miller in the face or head with the gun, did you see that firearm?

A. I had never seen it until after he hit him. That's when I got shocked. I was like: Whoa, what the?

Q. So he didn't show you the firearm prior to getting into the car to go to the casino?

A. No.

RP 342-3.

When this court looks to the evidence, the facts presented to the jury, in a light most favorable to the State there can be no other conclusion than Sandoval secreted this illegal weapon in his overalls or inside the coat he was wearing and after he determined it was time to rob the victims the weapon was taken out and put to use.

IV. CONCLUSION

For the reasons set forth above this court should deny this appeal.

Respectfully submitted this 5th day of June 2017,

By: s/ David B. Trefry

DAVID B. TREFRY WSBA# 16050

Senior Deputy Prosecuting Attorney

P.O. Box 4846 Spokane, WA 99220

Telephone: 1-509-534-3505

E-mail: David.Trefry@co.yakima.wa.us

APPENDIX A

The attached photograph is one of several exhibits that have been supplementally designated by the State.



DECLARATION OF SERVICE

I, David B. Trefry state that on June 5, 2017 emailed a copy, by agreement of the parties, of the Respondent's Brief, to Edward Penoyar at edwardpenoyar@gmail.com and Joel Morris Penoyar at penoyarlawyer@gmail.com

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 5th day of June, 2017 at Spokane, Washington.

By: s/David B. Trefry
DAVID B. TREFRY WSBA# 16050
Senior Deputy Prosecuting Attorney
Yakima County
P.O. Box 4846 Spokane, WA 99220
Telephone: 1-509-534-3505
E-mail: David.Trefry@co.yakima.wa.us

YAKIMA COUNTY PROSECUTORS OFFICE

June 05, 2017 - 3:01 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 34437-1
Appellate Court Case Title: State of Washington v. Gabriel Arredondo Sandoval
Superior Court Case Number: 15-1-00435-8

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Sender Name: David Trefry - Email: David.Trefry@co.yakima.wa.us
Address:
PO BOX 4846
SPOKANE, WA, 99220-0846
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