

FILED  
Court of Appeals  
Division III  
State of Washington  
3/20/2019 11:56 AM

No. 35828-3-III

COURT OF APPEALS DIVISION III  
OF THE STATE OF WASHINGTON

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State of Washington,  
*Respondent*

v.

Jared Steven Lee,  
*Appellant*

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Appeal from the Superior Court of Yakima County

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*REPY BRIEF OF APPELLANT*

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Attorney for Appellant Jared Steven Lee:  
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## **I. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR**

Did the court err when it sentenced the defendant for First Degree Robbery, where the evidence was insufficient as to the taking of the twelve dollars.

## **II. STATEMENT OF THE CASE**

The government, by way of the response brief, misstates or ignores evidence from the trial. First, as to the twelve dollars, which the state alleged was taken to establish the robbery count. Roger Salazar testified that Esteban Salazar threw (twelve \$12.00) at the man saying that is all we have. (RP 252) (RP 287)

Officer Jamie Gonzalez, who is fluent in both English and Spanish, testified. Officer Gonzalez said there was no \$12.00 recovered, but it was reportedly offered to the person that had the gun. (RP 488) He does not remember anyone saying the money was taken, but it was offered to Mr. Lee. (RP 488) Also, that had the police been told that \$12.00 was taken, they would have looked for it. (RP 489) Officer Gonzalez remembers that the twelve dollars was offered to Mr. Lee but was not taken. (RP 49, lines 11-14) Officer Gonzalez documents in his report that Esteban Salazar offered the \$12.00 from his pocket to the suspect. (RP491, line 24 to RP 492, line 6) and the suspect yelled he wanted \$3,000.00.

Officer Scherschilst was recalled and he testified Mr. Esteban Salazar said that he gave Mr. Lee \$12.00 (RP 523) Mr. Lee was not found with the \$12.00 on him (RP 525) The report documents that Roger Salazar said he gave Mr. Lee \$12.00 from his front

pocket. (RP 526) Mr. Esteban Salazar testified that he pulled \$12.00 from his pocket and gave it to the man in the car. (RP535) The man took the \$12.00, but said he wanted \$3.000.00 (RP 536)

As to the DNA evidence, Antony Ayela testified that he worked at Fiesta Foods. He said one of the Hispanic guys pulled out a gun and started striking the white guy in the head. (RP 328) He did see the Hispanic male hitting Mr. Lee with the gun. (RP 332) The Hispanic man struck the white man three times with the gun. (RP 333)

Krista Drury, of the Yakima Police Department forensics lab, testified she examined a .45 caliber Smith and Wesson semi-automatic weapon capable of holding eight rounds in the magazine and one bullet in the weapon. (RP 429-430) The weapon was fingerprinted, but no usable fingerprints were found on the weapon. (RP 434) DNA evidence was taken from the grips of the firearm. (RP 438) She observed a red stain on the firearm grips that she swabbed believing it to be blood. (RP 438-439) Blood was found on the grip and slide of the weapon. (RP 470-471) The blood on the gun could be consistent with a person being hit in the head or with a person holding the gun. (RP 478)

### **III. ARGUMENT**

1. The court erred when it sentenced the defendant to First Degree Robbery where the evidence was insufficient as to the taking of the twelve dollars.

It is clear that the goal of the robbery was to obtain the \$3,000.00 brought to purchase the BMW. (RP 244) But, the government has confused the twelve dollars offered to the person that had the gun. (RP 488) As Officer Jaime Gonzalez, the bilingual officer, explained, he did not remember anyone saying the money was taken but that it had been offered to Mr. Lee. (RP 488) As Officer Gonzalez explained, had he been told that if the twelve dollars was taken from the victim, they would have looked for it. (RP 488, 490-491) It is important to note that Roger Salazar testified that his father doesn't speak English, only Spanish. (RP 187) In fact, the testimony was that the man said he wanted "all the money." (RP 253) The evidence presented does not support both a robbery and an attempted robbery conviction. The dismissal of the allegation that twelve dollars was taken is necessary based upon the lack of evidence that twelve dollars was taken. Mr. Lee was not found in possession of twelve dollars. (RP 488, 380) Sergeant Troy Adam documented the evidence found through testimony and photos, but there was no evidence of twelve dollars either in the car or with Mr. Lee. (RP 492-502, 525).

As the State cites in its Response Brief, on review the Court reviews the evidence, in this case the circumstantial evidence, in the light most favorable to the State "to determine whether 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, 221, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). The State submits circumstantial evidence to the jury, and to this Court, in the

form of trial testimony from the two victims, who claim they gave Mr. Lee a total of twelve dollars.

The importance of the location of the \$12.00 is the corroborating effect it has on the testimony of the two victims. A rational trier of fact could hear the testimony of the two victims, compare it to their statements to police, where they said in a moment of panic essentially \$12.00 was pulled out of Esteban's pocket and thrown in the backseat towards Mr. Lee and compare that again with the testimony of the officers who were told by the victims that money was "offered" not "given", and conclude reasonable doubt exists as to the evidence relating to the \$12.00 robbery. The record contains too much conflicting evidence to compare with each other and still meet the elements of the crime beyond a reasonable doubt.

However that testimony is the extent of the State's evidence in the presentation of their case but during cross-examination defense counsel learned none of the defendants' booking sheets included property in the form of \$12.00 cash. The trial testimony of the responding officers similarly excluded reference to the taking of \$12.00 by Mr. Lee, only vaguely stating Mr. Lee was offered \$12.00 instead of the \$3,000 and that Mr. Lee declined to take the money. Law enforcement trial testimony submitted they had processed the \$12.00 as part of the crime scene, but that it was not in the possession of the defendants

Without the twelve dollars, the state has an attempted robbery because it is clear from all the evidence that the money brought to purchase the BMW was still in possession of the Salazars. (RP 488, 500, 502)

Here, the court went beyond the evidence to uphold both a robbery and attempted robbery. The government failed to prove that twelve dollars was “obtained or retained from the person of another.” RCW 9A.56.190. This is an essential element of the crime and must be proven beyond a reasonable doubt. Even after viewing the evidence in the light most favorable to the State, certainly at least one rationale trier of fact could have found the conflicting evidence to create reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (plurality opinion) (emphasis omitted) (quoting Jackson, 443 U.S. at 319); State v. Johnson, 188 Wn.2d 742, 399 P.3d 507, (2017).

Due process requires the State prove every essential element of the crime beyond a reasonable doubt. U.S. Const. amend. XIV; Wash. Const. art. I, § 3; In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)

; State v. Rich, 184 Wn.2d 897, 903, 365 P.3d 746 (2016); State v. Johnson, 188 Wn.2d 742, 399 P.3d 507, (2017).

#### IV. CONCLUSION

The court should find that the charge of First Degree Robbery, based upon the taking of twelve dollars, cannot stand where the evidence does not support the taking, obtaining, or retaining of the twelve dollars. The evidence supports only that twelve

dollars was offered by one of the Salazars. The defendant seeks remand to sentence based upon a single conviction of attempted robbery and a single weapon enhancement.

Respectfully submitted this 18<sup>th</sup> day of March, 2019



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**COURT OF APPEALS, DIVISION III  
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STATE OF WASHINGTON,

Plaintiff/Respondent,

v.

JARED STEVEN LEE,

Defendant/Appellant.

Case No.: 35828-3-III  
Superior Cause No. 17-01-00440-39

**DECLARATION  
OF SERVICE**

I, Douglas D. Phelps, declare as follows: That I am over the age of eighteen (18) years, not a party to this action, and competent to be a witness herein. That I, as attorney of record for the Defendant/Appellant, served in the manner indicated below, an original of the Appellant's Reply Brief, on March 20, 2019, to the following in the manner indicated:

COURT OF APPEALS DIV. III  
500 North Cedar  
Spokane, WA 99201

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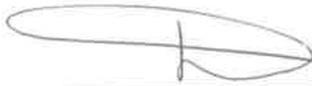
I further declare that I served in the manner indicated below, a copy of the Appellant's Reply Brief, on March 20, 2019, to the following in the manner indicated:

YAKIMA COUNTY PROSECUTOR  
128 N. 2<sup>ND</sup> STREET, ROOM 329  
YAKIMA, WA 98901

X Appellate Portal

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Spokane, Washington, this 20th day of March, 2019



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Attorney for Defendant/Appellant

**PHELPS & ASSOCIATES, P.S.**

**March 20, 2019 - 11:56 AM**

**Transmittal Information**

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**Appellate Court Case Title:** State of Washington v. Jared Steven Lee  
**Superior Court Case Number:** 17-1-00440-1

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