

FILED
Court of Appeals
Division III
State of Washington
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NO. 36452-6-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

LAJUANE ROBERSON,
Appellant.

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

Spokane County Cause No. 17-1-01907-1

The Honorable Annette S. Plese, Judge

REPLY BRIEF OF APPELLANT

Skylar T. Brett
Attorney for Appellant

LAW OFFICE OF SKYLAR BRETT, PLLC
PO BOX 18084
SEATTLE, WA 98118
(206) 494-0098
skylarbrettlawoffice@gmail.com

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ARGUMENT

I. MR. ROBERSON DID NOT “INVITE” THE TRIAL COURT’S ERROR OF ERRONEOUSLY ADMITTING EVIDENCE THAT CONFUSED AND MISLED THE JURY INTO BELIEVING THAT HE HAD ADMITTED TO THE BURGLARY CHARGE.

Mr. Roberson objected at trial to Ms. Sanfilippo’s testimony that she overheard him admit to her son that he had “robbed the place” but “did not need to rape anyone.” RP 325-26. Defense counsel argued at length that Ms. Sanfilippo’s testimony was tainted by bias, did not have a nexus to the charges at trial, and was unfairly prejudicial. *See* RP 310-22.

Even so, the state argues that Mr. Roberson invited the trial court’s error in admitting the evidence by providing “flawed factual information” regarding the date of his arrest. Brief of Respondent, pp. 16-17. It is unclear whether defense counsel was discussing Mr. Roberson’s arrest for the instant charges or a different incident when he claimed that the arrest had taken place on 12/13/16. *See* RP 313. Regardless, however, the court had already heard testimony that charges were not filed in the instant case until months later. *See* RP 276. The court knew that Mr. Roberson was not arrested for the charges at issue in December. The court’s ruling does not appear to have been based on considerations of the date of Mr. Roberson’s arrest anyway. *See* RP 322-23.

Additionally, the state is unable to cite to any authority holding that the invited error doctrine applies to a situation in which defense counsel objected to the alleged error at trial but misspoke regarding the factual details during the argument. *See* Brief of Respondent, pp. 16-17.

Rather, the invited error doctrine bars reversal on appeal when a trial error was created by “a party’s tactical choices.” *State v. Momah*, 167 Wn.2d 140, 153, 217 P.3d 321 (2009). The doctrine provides that: “a party who sets up an error at trial cannot claim that very action as error on appeal and receive a new trial.” *Id.*

There is no credible claim that Mr. Roberson made a tactical decision to “set up” the error of the admission of Ms. Sanfilippo’s testimony. Even if defense counsel misspoke regarding the date of his arrest – which is far from clear on the record – the trial court already knew the correct date and did not base the ruling admitting the evidence on that date anyway. Mr. Roberson did not invite the error. *Momah*, 167 Wn.2d at 153.

The trial court abused its discretion by admitting Ms. Sanfilippo’s testimony regarding the statements she had allegedly overheard Mr. Roberson make to her son. ER 403; *State v. Johnson*, 90 Wn. App. 54, 62, 950 P.2d 981 (1998). Mr. Roberson’s convictions must be reversed. *Id.*

II. MR. ROBERSON RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AT HIS SENTENCING HEARING. DEFENSE COUNSEL UNREASONABLY FAILED TO RAISE MR. ROBERSON'S YOUTHFULNESS AS A MITIGATING FACTOR AND TO ARGUE THAT HIS PRIOR (AND CURRENT) CONVICTIONS QUALIFY AS "SAME CRIMINAL CONDUCT" FOR PURPOSES OF HIS OFFENDER SCORE.

Mr. Roberson relies on the arguments set forth in his Opening Brief.

CONCLUSION

Mr. Roberson's convictions must be reversed for the reasons set forth above and in his Opening Brief.

Respectfully submitted on September 12, 2019,



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Reply Brief, postage prepaid, to:

Lajuane Roberson/DOC#393510
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Spokane County Prosecuting Attorney
SCPAappeals@spokanecounty.org

I filed the Appellant's Reply Brief electronically with the Court of Appeals, Division III, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington on September 12, 2019.



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

LAW OFFICE OF SKYLAR BRETT

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