

FILED  
Court of Appeals  
Division III  
State of Washington  
11/12/2019 4:40 PM

No. 36759-2-III

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

---

STATE OF WASHINGTON,

Respondent,

v.

JASON DAVIS,

Appellant.

---

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

---

BRIEF OF APPELLANT

---

TIFFINIE B. MA  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 610  
Seattle, Washington 98101  
(206) 587-2711  
tiffinie@washapp.org

TABLE OF CONTENTS

A. INTRODUCTION ..... 1

B. ASSIGNMENTS OF ERROR ..... 1

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 2

    1. The State presented insufficient evidence of residential burglary  
    and theft in the second degree..... 5

        a. *The State presented insufficient evidence of residential  
        burglary because it failed to show Mr. Davis intended to  
        commit a crime inside the Seasoned House. .... 6*

        b. *The State presented insufficient evidence of theft in the  
        second degree because it failed to prove Mr. Davis  
        intended to deprive Ms. Rock of her earrings and ring. 8*

F. CONCLUSION..... 9

TABLE OF AUTHORITIES

**UNITED STATE SUPREME COURT CASES**

*In re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)..5

**WASHINGTON SUPREME COURT CASES**

*State v. Randhawa*, 133 Wn.2d 67, 941 P.2d 661 (1997)..... 7

**WASHINGTON COURT OF APPEALS CASES**

*State v. Devitt*, 152 Wn. App. 907, 218 P.3d 647 (2009) ..... 6

*State v. Hummel*, 196 Wn. App. 329, 383 P.3d 592 (2016) ..... 5, 7, 8

**DECISIONS OF OTHER JURISDICTIONS**

*United States v. Nevils*, 598 F.3d 1158 (9th Cir. 2010)..... 5

**CONSTITUTIONAL PROVISIONS**

U.S. Const. amend. XIV ..... 5

**STATUTES**

RCW 9A.52.025(1)..... 6

RCW 9A.56.020(a) ..... 8

RCW 9A.56.040(1)(a) ..... 8

**A. INTRODUCTION**

Jason Davis entered The Seasoned House, a joint event space and private residence in Pullman, seeking shelter during a snowy winter night. While inside, he engaged in a series of odd behaviors, including moving furniture around, placing objects in the shower, hiding drinks behind false walls, and putting on jewelry he found in the building. He made no attempt to leave or take anything out of the building, even after he was discovered by one of the building's owners and police were called. Nevertheless, he was charged and convicted of residential burglary and second degree theft. Because the State's evidence is insufficient to prove Mr. Davis intended to commit a crime inside the building and that he had the intent to deprive the building owner of her jewelry, this Court should reverse.

**B. ASSIGNMENTS OF ERROR**

1. In violation of the Fourteenth Amendment right to due process, the State presented insufficient evidence of residential burglary.

2. In violation of the Fourteenth Amendment right to due process, the State presented insufficient evidence of theft in the second degree.

### **C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. The Fourteenth Amendment requires the government to establish all essential elements of the crime charged beyond a reasonable doubt. To prove residential burglary, the government must prove the defendant intended to commit a crime inside the dwelling he entered. Here, Mr. Davis only intended to seek shelter during a cold winter night. Must this Court dismiss the charge where the government failed to prove Mr. Davis intended to commit a crime inside the Seasoned House?

2. The Fourteenth Amendment requires the government to establish all essential elements of the crime charged beyond a reasonable doubt. To prove theft in the second degree, the government must prove the defendant intended to deprive another person of property belonging to that person. Here, the evidence shows Mr. Davis intended to take photos of the jewelry found on his person, and that he made no attempt to leave to remove property from the premises. Must this Court dismiss the charge where the State failed to prove Mr. Davis intended to deprive the property owner of her jewelry?

#### **D. STATEMENT OF THE CASE**

On the morning of February 6, 2019, Sarah Joplin, co-owner of The Seasoned House, an event space and partial residence, arrived at the House to shovel snow. RP 157, 158-59. Ms. Joplin noticed footprints in the snow leading up to the front door. RP 159. A pair of golf shoes that had been left by a guest and the entry rug were missing. RP 160. Ms. Joplin went around the building and entered through the back entrance. RP 160.

Once inside, Ms. Joplin saw a man, later identified as Jason Davis, looking at a wall of clocks and drinking a beer. RP 160. Mr. Davis told Ms. Joplin he was there to change the clock batteries. RP 172. Ms. Joplin called her business partner, Daiquiri Rock, who confirmed they had not scheduled any appointments that day, and then called 911. RP 162-63.

When the police arrived, they located Mr. Davis in an upstairs bedroom. RP 192. A silver ring and a pair of emerald earrings belonging to Ms. Rock were found on Mr. Davis's person. RP 201, 202. The earrings were in his pocket, and the ring was partly on his finger. RP 201-02. He had plugged in his phone to charge near a window. RP 205. Additionally, many things had been moved or

disturbed. RP 184. A window had been broken and the entry rug placed over it. RP 164. Candles from a candelabra had been placed in the basement, in the upstairs shower, and all over the house. RP 169. Furniture had been stacked up in piles. RP 169. The golf shoes that had previously been outside were found upstairs. RP 169. A rug had been moved to cover the broken glass from the window. RP 170. Beverages and food items had been consumed or displaced. RP 170-71. The owners found a bottle of blue curaçao hidden behind a fake wall they kept upstairs. RP 171.

There was no evidence Mr. Davis took any property out of the building or attempted to leave after Ms. Joplin discovered him inside. The State charged Mr. Davis with residential burglary, third degree malicious mischief, and second degree theft.

At trial, Mr. Davis stated he entered the Seasoned House because “It was freezing outside” and he was trying to stay warm. RP 264. He did not know what the building was when he entered. RP 265. He acknowledged the police found jewelry in his pocket and on his hand, and stated that he wanted to take pictures of the jewelry to compare to his friend’s jewelry. RP 265. Mr. Davis plugged his phone in to charge in order to take those photographs. RP 265-66.

Mr. Davis admitted he broke a window to enter the building, stating, “I was freezing outside, sitting on the porch, and I made a decision to go in there due to the fact that it was freezing outside and I didn’t think I could handle it anymore.” RP 265. He tried to preserve the pieces of broken glass, thinking the window could be repaired easily. RP 265-66. He only intended to “possibly not freeze” when he entered the Seasoned House. RP 266. Mr. Davis was convicted as charged.

**E. ARGUMENT**

**1. The State presented insufficient evidence of residential burglary and theft in the second degree.**

The State is required to prove all elements of the charged offense beyond a reasonable doubt, and the failure to do so requires dismissal of the charge. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. XIV. Evidence is insufficient to support a verdict where “mere speculation, rather than reasonable inference, supports the government’s case.” *United States v. Nevils*, 598 F.3d 1158, 1167 (9th Cir. 2010). The remedy is reversal and remand for judgment of dismissal with prejudice. *State v. Hummel*, 196 Wn. App. 329, 359, 383 P.3d 592 (2016), *review denied*, 187 Wn.2d 1 (2017).

*a. The State presented insufficient evidence of residential burglary because it failed to show Mr. Davis intended to commit a crime inside the Seasoned House.*

A residential burglary conviction requires proof the defendant entered or remained unlawfully in a dwelling “with intent to commit a crime against a person or property therein.” RCW 9A.52.025(1). Because the State’s evidence was insufficient to prove Mr. Davis intended to commit a crime within the Seasoned House, the charge should be dismissed. *State v. Devitt*, 152 Wn. App. 907, 913, 218 P.3d 647 (2009).

To prove residential burglary, the government was obligated to prove Mr. Davis intended to commit a crime against a person or property inside the Seasoned House. The State argued Mr. Davis intended to commit theft inside the premises by stealing Ms. Rock’s earrings and ring. However, the evidence established Mr. Davis entered and remained in the building in order to escape the freezing temperatures outside, stating he “didn’t think [he] could handle it anymore.” RP 265.

The State’s evidence showed Mr. Davis engaged in a series of odd behaviors inside the building, including moving items around, stacking furniture in piles, hiding things behind false walls, and putting

on a ring that did not fit him. RP 169-171, 201-02. That jewelry was found on his person is but one fact of many that, when taken together, indicate only that Mr. Davis acted strangely inside the Seasoned House, not that he intended to steal jewelry.

There was no evidence Mr. Davis moved any items outside, gathered up valuable items, or attempted to leave the premises with any items, even after Ms. Joplin discovered him inside and called the police. Indeed, Mr. Davis testified he wanted to take pictures of the jewelry and started to charge his phone in order to do so. RP 265-66. He also attempted to cover the broken window and preserve the pieces of broken glass, indicating he was trying to stay warm. RP 164, 170.

Given the evidence presented, no rational trier of fact could have found beyond a reasonable doubt that Mr. Davis entered or remained inside the Seasoned House with intent to commit a crime. *State v. Randhawa*, 133 Wn.2d 67, 73, 941 P.2d 661 (1997). Reversal and dismissal of the residential burglary charge is required. *State v. Hummel*, 196 Wn. App. at 359.

*b. The State presented insufficient evidence of theft in the second degree because it failed to prove Mr. Davis intended to deprive Ms. Rock of her earrings and ring.*

Additionally, theft in the second degree requires proof the defendant intended to deprive a person of property or services valued over \$750 but less than \$5000. RCW 9A.56.040(1)(a); RCW 9A.56.020(a). Here, the State's evidence was insufficient to prove Mr. Davis intended to deprive Ms. Rock of her earrings and ring. Therefore, reversal and dismissal of the charge is required. *Hummel*, 196 Wn. App. at 359.

As discussed above, Mr. Davis's behavior within the Seasoned House was unusual. For example, he placed candles all over the building, including in the shower and in the basement, he hid a bottle of alcohol behind a false wall, and he tried to wear a ring that did not fit on his finger. Mr. Davis did not attempt to hide the jewelry or remove it once he was discovered, he did not try to leave the building or run from the police, and he did not have possession of any other valuables, despite having access to all of Ms. Rock's jewelry. RP 290.

This evidence is insufficient to prove Mr. Davis intended to deprive Ms. Rock of her jewelry. Although he was not a jeweler and did not have the proper qualifications, Mr. Davis stated he wanted to

take photos of the jewelry for comparison with his friend's jewelry, and tried to charge his phone in order to take the photos. RP 265. Certainly when placed in the context of all of his behavior inside the building, Mr. Davis's possession of the earrings and ring is merely another odd behavior, not a theft. Because the State's evidence fails to prove Mr. Davis intended to deprive Ms. Rock of her jewelry, this Court should reverse and dismiss the charge.

**F. CONCLUSION**

For the reasons stated above, Mr. Davis asks this Court to reverse his convictions for residential burglary and theft in the second degree and dismiss the charges.

DATED this 12<sup>th</sup> day of November 2019.

Respectfully submitted,

/s Tiffinie B. Ma  
Tiffinie B. Ma – WSBA #51420  
Attorney for Appellant  
Washington Appellate Project (91052)  
1511 Third Ave, Ste 610  
Seattle, WA 98101  
Telephone: (206) 587-2711  
Fax: (206) 587-2711

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

---

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 36759-2-III
	)	
JASON DAVIS,	)	
	)	
APPELLANT.	)	

---

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 12<sup>TH</sup> DAY OF NOVEMBER, 2019, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE COURT OF APPEALS – DIVISION THREE AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] DENIS TRACY, PROSECUTOR [denist@co.whitman.wa.us] WHITMAN COUNTY PROSECUTOR'S OFFICE PO BOX 30 COLFAX WA 99111-0030	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
[X] JASON DAVIS 415842 WASHINGTON STATE PENITENTIARY 1313 N 13 <sup>TH</sup> AVE WALLA WALLA, WA 99362	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 12<sup>TH</sup> DAY OF NOVEMBER, 2019.

X \_\_\_\_\_ 

**Washington Appellate Project**  
1511 Third Avenue, Suite 610  
Seattle, Washington 98101  
Phone (206) 587-2711  
Fax (206) 587-2710

# WASHINGTON APPELLATE PROJECT

November 12, 2019 - 4:40 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 36759-2  
**Appellate Court Case Title:** State of Washington v. Jason Anthony Davis  
**Superior Court Case Number:** 19-1-00025-7

### The following documents have been uploaded:

- 367592\_Briefs\_20191112164030D3847699\_7009.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was washapp.111219-11.pdf*

### A copy of the uploaded files will be sent to:

- amandap@co.whitman.wa.us
- denist@co.whitman.wa.us
- greg@washapp.org

### Comments:

---

Sender Name: MARIA RILEY - Email: maria@washapp.org

**Filing on Behalf of:** Tiffinie Bie Ha Ma - Email: tiffinie@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:  
1511 3RD AVE STE 610  
SEATTLE, WA, 98101  
Phone: (206) 587-2711

**Note: The Filing Id is 20191112164030D3847699**