

FILED
Court of Appeals
Division III
State of Washington
9/14/2020 3:54 PM

No. 367886-1-III

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

STATE OF WASHINGTON,
Respondent

v.

EDWIN ESPEJO,
Appellant

REPLY BRIEF OF APPELLANT

John Gary Metro
WSBA 37919
719 Jadwin Avenue
Richland, Washington 99352

Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Defendants' s Reply.....4

Defendant's Conclusion..... 7

TABLE OF AUTHORITES

Washington Cases

State v. Bingham, 105 Wn2d 820, 823 (1986).....	4
State v. Pirtle, 127 Wn 2d 628, 694 (1995).....	4, 5
<i>State v. Schultz</i> 170 Wn. 2d 746.....	6

Other Jurisdictions

Musacchio v. United States 136 S.Ct. 709, 715 (2016). ..	4
--	---

Statutes, Rules, Regulations

.” RCW 9A.32.050(1)(a).	4
.” RCW 9A.32.020(1).....	4

I. DEFENDANT'S REPLY

The legal determination of the sufficiency of the evidence addresses whether the government's case was so lacking that it should not have been sent to the jury. *Musacchio v. United States* 136 S.Ct. 709, 715 (2016). To convict a person of attempted first degree, murder the state must show the essential element of pre-meditation. The essential element of premeditation differentiates murder in the first degree from murder in the second degree. *State v. Bingham*, 105 Wn2d 820, 823 (1986) A person is guilty of second-degree murder when "with intent to cause the death of another person but without premeditation, he or she causes the death of another person." *RCW 9A.32.050(1)(a)*. As defined by the legislature, premeditation must involve "more than a moment in point of time." *RCW 9A.32.020(1)* The "mere opportunity to deliberate is not sufficient to support a

finding of premeditation.” *State v. Pirtle*, 127 Wn 2d 628, 694 (1995). Here, the evidence does not support finding of premeditation beyond a reasonable doubt. Mr. Espejo did not entice the police to come into his basement. The police interrogated Mr. Espejo at gunpoint. He lifted his empty arms as if to surrender when he is shot several times. The state argues that he, Mr. Espejo, was capable of premeditation in the instant after he is tazed and/or shot. Mr. Espejo did not have the opportunity to deliberate after he was tazed and before he reached for a gun. No human being would be able to deliberate in the instant it takes to react. There is no evidence to support the contention that Mr. Espejo was capable of premeditation. As a result, the three counts of premeditated murder must be dismissed.

The emergency aid exception to the warrant requirement may be invoked only when (1) the officer subjectively believed that someone likely needed assistance for health or safety reasons; (2) a

reasonable person in the same situation would similarly believe that there was a need for assistance; and (3) there was a reasonable basis to associate the need for assistance with the place searched,(4)there is an imminent threat of substantial injury to persons or property, (5) state agents must believe a specific person or persons or property is in need of immediate help for health and safety reasons, and (6) the claimed emergency is not a mere pretext for an evidentiary search. *State v. Schultz* 170 Wn. 2d 746. The State must establish that police had a reasonable belief that all these elements of the emergency aid exception were satisfied before crossing the threshold into Mr. Espejo's basement living area. Here, the state utterly failed to carry its burden. The police created the emergency by their behavior. Mr. Espejo was in danger of committing suicide because the police were illegally on his property. If the police left the site or withdrew from the basement, the emergency would have ended. Here, the evidence of the gun which was found on Mr. Espejo's bed must be suppressed. The

state can not create an emergency and argue that they can violate the defendant's right to life and liberty because they, the police, put his life at risk.

II. CONCLUSION

There was no evidence presented which would lead a reasonable person to believe that Mr. Espejo had time to deliberate before he reacted and shot his pistol. Evidence of the pistol must be suppressed, the police had no legitimate reason to enter into Mr. Espejo's home and stay there once the emergency had abated.

Dated: September 14, 2020 Respectfully Submitted,

By: s/John Gary Metro
John Gary Metro
WSBA No. 37919
719 Jadwin Avenue
Richland, Washington. 99352
(509) 943-7011
garymetro@outlook.com

METRO LAW OFFICE

September 14, 2020 - 3:54 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36788-6
Appellate Court Case Title: State of Washington v. Edwin Espejo
Superior Court Case Number: 17-1-50604-3

The following documents have been uploaded:

- 367886_Affidavit_Declaration_20200914155207D3888374_7911.pdf
This File Contains:
Affidavit/Declaration - Service
The Original File Name was EspejoAFF1.pdf
- 367886_Briefs_20200914155207D3888374_7863.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was EspejoReply2.pdf

A copy of the uploaded files will be sent to:

- appeals@co.franklin.wa.us
- fjenny@co.franklin.wa.us
- gasrymetro@outlook.com
- ssant@co.franklin.wa.us

Comments:

Sender Name: Carla Toebe - Email: garymetrolawfirm@gmail.com

Filing on Behalf of: John Gary Metro - Email: garymetrolawfirm@gmail.com (Alternate Email: garymetro@outlook.com)

Address:
719 Jadwin Ave
Richland, WA, 99352
Phone: (509) 943-7011

Note: The Filing Id is 20200914155207D3888374