

FILED
Court of Appeals
Division III
State of Washington
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In the Court of Appeals of the State of Washington
Division 3

STATE OF WASHINGTON, Respondent

v.

COREY J. WILLIAMS, Appellant

APPELLANT'S BRIEF

Corey J. Williams, *Pro se*
Appellant
DOC # 864621
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326

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A) ASSIGNMENTS OF ERROR

1. The trial court abused its discretion by not timely hearing Mr. William's¹ arrest of judgment motion denying Mr. Williams his constitutional right to due process.
2. By entering in "knowledge" in place of "intent" in the new findings of fact and conclusions of law relieves the State of their mandatory burden to prove every element of residential burglary beyond a reasonable doubt.
3. The Honorable Judge Spanner abused his discretion by not weighing in evidence and testimony in a factual hearing about abandonment when the fact finder has brought in a new finding of facts and conclusions of law outside of the jury verdict.
4. The state redacted exculpatory evidence from Mr. Williams that violated his constitutional rights to a fair trial.

1. The trial court addressed the defendant as Mr. Pugh as he requested during trial. This brief in the interest of minimizing confusion will refer to the appellant as Mr. Williams with the exception of quoting RP's.

B) ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the Superior Court Judge abuse his discretion by not having the arrest of judgment hearing?
2. Did the Honorable Bruce A. Spanner relieve the State of their mandatory burden to prove every element beyond a reasonable doubt for residential burglary when entering “knowledge” in place of “intent” in the new findings of fact and conclusions of law?
3. Did the Honorable Judge Spanner abuse his discretion by not weighing in evidence and testimony in a factual hearing about abandonment when the fact finder has brought in a new filing of fact and conclusion of law outside of the jury verdict?
4. Did the State violate the Constitution redacting exculpatory evidence to pro se litigant supporting the fact findings and conclusion of law that the alleged victim no longer resided at the alleged burglarized address?

C) STATEMENT OF THE CASE

The appellant, Corey J. Williams, a member of the Williams tribe, appearing as a special appearance.

Mr. Williams was charged with two counts of residential burglary and one count of theft in the second degree the affidavit of probable cause in support of the motion for an arrest warrant stated: Police reports indicate that in Benton County, the defendant plead guilty on 1-22-15 to several counts of Theft in the Second Degree, Attempted Theft in the Second Degree and Criminal Trespass involving multiple schemes where he would rent property for which he had no legal right.

On September 16, 2015 the defendant, using a dab of "C. Williams Group LLC" filed a lien on 523 N. Ely for \$11, 500 stating the legal owners, Gail and Joseph Timmins, owed a debt for property management and labor performed...The defendant also filed a lien for \$12,800 on 2402 W. Bruneau, Kennewick, Wa.[sic] on 9-25-15 claiming that the legal owners, Catarino and Barbara Leija were indebted to him. It stated that Mr. Williams rented the North Ely property to Ms. Ironbear on 9-29-15 and was paid \$1800 for deposit and first months rent, Mr. Williams attempted to rent the West Bruneau property to Mr. O'Connor and Mr. Watson and after paying \$875 as a deposit became suspicious and back out of any additional deal.

Mr. Williams was arraigned on 12-28-15 and informed the court that he wished to represent himself, what followed was a Faretta² colloquy regarding self-representation.

In the hearings leading up to trial the court inquired further and informed Mr. Williams "...on several occasions during the last hearing you did not respond to procedural inquiries, this being regarding pleas. And I've given some thought as to how to respond to that. Because your right to represent yourself is a fundamental right, it would be inappropriate of me to, if you fail to respond, revoke that right and appoint an attorney for you. I believe that would be an error on my part. RP (Jan. 28, 2016) at 3.

During the same hearing the court implored Mr. Williams to have legal representation stating "I urge you to be represented by an attorney. You have the right to representation by an attorney, even if you cannot afford one. And I will appoint an attorney for you at any time during these cases, if you request one."RP (Jan. 28, 2016) at 13.

During motions in limine, the prosecuting attorney argued that Mr. Williams plead guilty to prior convictions in 2013 of "several counts,

² Faretta v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L.Ed. 2d 562 (1975)

criminal trespass, theft in the second degree - - four counts of that attempted theft in the second degree, and theft in the third degree” and asserted that the “prior case should come in to explain that is part of a similar scheme.” RP (Feb. 16, 2016) at 5.

The prosecuting attorney stated:

In the 2013 case, what the defendant did was basically rent out the property that was foreclosed on or had been abandoned. In those cases the evidence was that he either claimed some sort of ownership interest in those other properties through a doctrine of adverse possession or he would go to a foreclosed owner, the former owner who had filed bankruptcy or been foreclosed on and would get a quitclaim deed and claim he has some sort of possessory interest in the property...So he gets out of prison and in this case our allegation is that what he did again was rented out property that had been abandoned. So it's the same scheme and we feel that the prior case should come in to explain that is part of a similar scheme. I think it also goes to his knowledge he was doing something illegal and his intent to deceive the victims. *Id* at 5.

Mr. Williams objected to “the evidence that he has actually presented...”
RP (Feb. 16, 2016) at 6. The trial court responded saying, “I’m going to
allow those convictions in...” *Id.* at 6.

Following the motions in limine, the court afforded Mr. Williams the
opportunity to address his defense(s) *Id.* at 9-11 stated:

THE COURT: Sure. Mr. Pugh, let me ask you. I
assume, I just briefly reviewed the case file, I want
to make sure your defense is a general denial.
You’re denying you committed this offense.

MR. WILLIAMS: Yes, sir. I have a couple other
defenses that I think the State has in their file that I
wanted to apply to the defenses.

THE COURT: Which are those?

MR. WILLIAMS: The first one actually is
abandonment, and I believe it applies to the
residential burglary in consensus with criminal
trespassing, sir.

THE COURT: Did you say you had another one?

MR. WILLIAMS: Yes. Claim of right.

THE COURT: Claim of right?

MR. WILLIAMS: Yes.

THE COURT: I guess I'm not sure of what you mean by that.

MR. WILLIAMS: In general terms claims, sir.

THE COURT: Any response to that, Mr. Bloor?

MR. BLOOR: I'm anticipating the defendant will probably testify and if he wants to present evidence he can certainly do that. I do have some jury instructions. Let me hand those up and I do have some instructions concerning liens in the packet.

...

MR. WILLIAMS: Also another thing I was asking the Court if the State has evidence of a commercial business the evidence they've presented. I was like if we can strike the lay dictionary term of claim and bring UCC commercial use of claim.

MR. BLOOR: I'm not sure what he is referring to. We have copies, certified copies of liens that the defendant filed on the two pieces of property that

we've alleged, so we are going to present evidence in the form of liens he filed with the county.

MR. WILLIAMS: I would just let the Court know if you can make a ruling on it. I - - The State has presented evidence of business and commercial use has actually been presented to and I would like for the UCC law to apply to this trial.

THE COURT: This is a criminal case. UCC is civil, that's civil law, but I will deny that. The motion is noted and it's on the record...

After opening statements the State called Ms. Timmins to testify. Ms. Timmins testified that she moved into 523 North Ely Street in "April of 1983" and she left the home around September 2013 because she thought the bank was going to foreclose on the property. She also testified that somebody came to change the locks the day she left the home saying, "...that the day that I left a gentleman came and told me I was leaving anyway because he was changing the locks on the door and I would no longer be able to get in." RP (Feb. 16, 2016) at 20-22.

Ms. Timmins testified that she left the property of her own free will and was aware her house was abandoned when she left it with no intention going back to the home. *Id.* At 26, 28-29.

Ms. Gillette was called by the State and testified that in September of 2015; she paid \$800 deposit and \$1000 for first months rent to help her daughter Ms. Ironbear *Id.* 36. She testified that Ms. Ironbear signed a lease agreement to lease 523 North Ely Street property and moved into the residence after the deposit and first months rent was paid. Ms. Gillette also testified that she saw Mr. Williams two days after Ms. Ironbear moved in and that he brought a stove and refrigerator in to the residence. *Id.* 33, 36. Ms. Ironbear testified that even though the lease was in her name her friend had already moved in and “her stuff was already unpacked in the house.” *Id.* 73 She further testified that she did not pay any other rent to the C. Williams Group because she “didn’t know where to find them” for the four months she lived in the home. *Id.* 80.

Detective Runge testified there were similarities between Mr. Williams previous convictions in 2013 which he investigated and the current charges against Mr. Williams saying “basically homes that have been unoccupied for a period of time were being located and the locks were being replaced and re-keyed. Then they were being rented out. A

couple of the homes I found notices on the door where Mr. Williams was claiming ownership...adverse possession.” RP (Feb. 17, 2016) at 106.

Det. Runge also testified of the difference in Mr. Williams’ alleged methods further, stating “the difference was he went from a claim of adverse possession to putting liens on homes.” *Id.* at 111.

Jury instructions were reviewed and discussed, the court asked Mr. Williams if he had any comments he would like to make regarding the instructions. Mr. Williams stated, “I would ask the Court if you would instruct under abandonment?” The court replied, “I will not do that...” Mr. Williams further objected to jury instruction 23, 19, and 21. RP (Feb. 17, 2016) at 139-41. The Jury found Mr. Williams guilty on Count I residential burglary regarding 523 North Ely Street, guilty on Count II theft in the second degree, and not guilty on Count III residential burglary regarding 2402 West Bruneau. *Id.* at 156-57.

Five days after trial Mr. Williams timely filed an arrest of judgment motion. The motion to arrest judgment was denied as untimely on March 28 2019, the superior court instead held a hearing as a CrR 7.8 motion that too was denied. Mr. Williams timely appeals.

D) ARGUMENT

1. Did the Superior Court Judge abuse his discretion by not having the arrest of judgment hearing?

Five days after trial Mr. Williams filed a timely arrest of judgment motion that was not heard, nor was it rescheduled to be heard by the superior court. The court erred in not hearing the motion violating Mr. Williams' constitutional right to due process.

CrR 7.4(b) Arrest of Judgment reads:

(b) Time for Motion; Contents of Motion. A motion for arrest of judgment must be served and filed within 10 days after the verdict or decision. The court on application of the defendant or on its own motion may in its discretion extend the time until such time as judgment is entered.

The arrest of judgment hearing did not take place within ninety-days after timely filing the motion, this is a violation of RCW 2.08.240 which states:

“LIMIT OF TIME FOR DECISION. Every case submitted to a judge of a superior court for his or her decision shall be decided by him or her within ninety days from the submission thereof: PROVIDED, That if within said period of ninety days a rehearing shall have been ordered, then the period within which he or she is

to decide shall commence at the time the cause is submitted upon such rehearing, and upon willful failure of any such judge so to do, he or she shall be deemed to have forfeited his or her office”.

The trial court is also in violation of State Constitution Art. 4 § 20 which states:

“DECISIONS, WHEN TO BE MADE. Every cause submitted to a judge of a superior court for his decision shall be decided by him within ninety days from the submission thereof; Provided, That if within said period of ninety days a rehearing shall have been ordered, then the period within which he is to decide shall commence at the time the cause is submitted upon such a hearing”.

RCW 2.08.240 and the State Const. Art. 4 § 20 almost read identical to one another, there is no doubt Mr. Williams has been denied his constitutional right to due process.

- 2. Did the Honorable Bruce A. Spanner relieve the State of their mandatory burden to prove every element beyond a reasonable doubt for residential burglary when entering “knowledge” in place of “intent” in the new findings of fact and conclusions of law?**

The essential elements to be charged of the crime of residential burglary RCW 9A.52.025 were presented to the jury in the given instruction number 9, which stated:

“To convict the defendant of the crime of residential burglary as charged in count regarding 523 North Ely, Kennewick, Washington each of the following elements of the crime must be proved beyond a reasonable doubt”.

- 1) That on or about the time from September 15, 2015 to October 5, 2015 the defendant entered or remained unlawfully in a dwelling;
- 2) That the entering or remaining was with **intent** to commit a crime against a person or property therein; and
- 3) That this act occurred in the State of Washington...

(Emphasis added)

The State bears the burden of proving all elements of a charged offense beyond a reasonable doubt as a matter of due process. In *re Winship* 397 U. S. 358, 364, 905, Ct. 1068, 25 L.Ed 368 (1970); *State v. Green* 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The Superior courts entry of a new findings of fact and conclusions of law relieved the state of its mandatory burden to prove all elements. A conviction must be reversed where, viewing the evidence in the light most favorable to the prosecution,

no rational trier of fact could have found guilt beyond a reasonable doubt.

State v. Kintz, 169 Wn.2d 537, 551, 238 P.3d 470 (2010)

In Mr. Williams' case Judge Spanner made his findings of fact and conclusions of law in accordance with RCW 9A.52.070 criminal trespass in the first degree therefore negating the states burden of proving all elements of residential burglary beyond a reasonable doubt. Judge Spanners' conclusions of law entered March 28, 2019 reads as follows:

CONCLUSIONS OF LAW

1. The defendant's Motion to Arrest Judgment is not timely and is denied.

2. However, the Court will address the defendant's substantive arguments pursuant to CrR 7.8 or RCW 10.73.090.

3. The defendant's motion, if brought under CrR 7.8 or pursuant to RCW 10.73.090, would be timely.

4. To address the defendant's substantive arguments:

a). Whether Ms. Timmins abandoned the real property is irrelevant. She was still the owner of the property.

b) Whether she had knowledge that the defendant had entered the real property is irrelevant. **The State must prove**

that the defendant had knowledge he was [sic] unlawfully entered property but not that the victim knew of the unlawful entry.

c) The Claim of Lien was filed under RCW 60.04, which is titled “Mechanics’ and Materialmens’ Liens.” Such liens do not give the lien holder a right of possession. The UCC is not applicable.

(Emphasis added)

RCW 9A.52.070 criminal trespass in the first degree states: (1) A person is guilty of criminal trespass in the first degree if he or she **knowingly** enters or remains unlawfully in a building. (2) Criminal trespass in the first degree is a gross misdemeanor. (Emphasis added).

Knowledge or knowingly is defined in RCW 9A.08.010(1)(b) as the following:

(b) KNOWLEDGE. A person knows or acts knowingly or with knowledge when:

- (i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense;

The cumulative effect of such a finding poses a violation of RCW

9A.04.100(1)(2) which states:

Proof beyond a reasonable doubt.

(1) Every person charged with the commission of a crime is presumed innocent unless proved guilty. No person may be convicted of a crime unless each element of such crime is proved by competent evidence beyond a reasonable doubt.

(2) When a crime has been proven against a person, and there exists a reasonable doubt as to which of two or more degrees he or she is guilty, he or she shall be convicted only of the lowest degree.

Furthermore, a violation of the State Constitution Art. 2, Section 18 :

STYLE OF LAWS. The style of the laws of the state shall be: "Be it enacted by the Legislature of the State of Washington." And no laws shall

be enacted except by bill. And State Constitution Art. 4, Section 19 :

JUDGES MAY NOT PRACTICE LAW. No judge of a court of record shall practice law in any court of this state during his continuance in

office. And a violation of the due process clause of the Fourteenth

Amendment which guarantees, "No state shall . . . deprive any person of

life, liberty, or property, without due process of law." U.S. CONST.
amend. XIV, section 1.

The Superior Court Judges' entry of a new findings of fact and conclusions of law relieved the state of its mandatory burden to prove all elements violating Mr. Williams' constitutional right to due process therefore, his conviction must be reversed, remanded and vacated.

3. Did the Honorable Judge Spanner abuse his discretion by not weighing in evidence and testimony in a factual hearing about abandonment when the fact finder has brought in a new finding of facts and conclusions of law outside of the jury verdict?

During motions in limine Mr. Williams informed the court of his intentions to assert the defense of abandonment and his request for a lesser included instruction in the following exchange(s):

THE COURT: I assume, I just briefly reviewed the case file, I want to make sure your defense is a general denial. You're denying you committed this offense.

MR. WILLIAMS: Yes, sir. I have a couple other defenses that I think the State has in their file that I wanted to apply to the defenses.

THE COURT; Which are those?

MR. WILLIAMS: The first one actually is abandonment, and I believe it applies to the residential burglary in consensus with criminal trespassing, sir. RP (Feb. 16, 2016) at 9-10.

...

MR. WILLIAMS: I believe if you look at I think in other courts they've looked at the criminal trespassing and residential burglary. If you look at that trespass in the first degree. A person is guilty of trespass in the first degree if he or she knowingly enters - -

THE COURT: These are not trespassing allegations.

MR. WILLIAMS: They are residential burglary allegations and I believe knowledge should be included.

THE COURT: Your position is noted but I will deny it.

Id. at 13

During discussions of jury instructions Mr. Williams asked the court to instruct under abandonment, the court refused to give the instruction. RP (Feb. 17, 2016) at 140. Mr. Williams was entitled to an instruction on a lesser included crime of criminal trespass and an abandonment instruction. Mr. Williams made a request and it is reversible

error to refuse to give the instruction *State v. Parker*, 102 Wn.2d 161, 683 P.2d 189 (1984).

The trial courts failure to instruct the jury on the applicable law entitles Mr. Williams to reversal of his residential burglary conviction and remand for a new trial.

A defendant is entitled to a lesser included offense instruction if (1) each of the elements of the lesser included offense is a necessary element of the charged offense and (2) the evidence supports and inference that the lesser crime was committed to the exclusion of the greater charged offense. *State v. Fernandez-Medina*, 141 Wn. 2d 448, 454, 6 P.3d 1150 (2000).

Criminal trespass is a lesser included offense of burglary and occurs when a person knowingly enters or remains unlawfully in a building. *State v. J.P.*, 130 Wn. App. 887, 895, 125 P.3d 215 (2005) The jury instructions as a whole must correctly apprise the jury of the law and enable a defendant to argue his defense theory. *State v. Rice*, 102 Wn.2d 120, 123, 683 P.2d 199 (1984).

The absence of these instructions violated Mr. Williams right to due process, the right to have a fair trial and relieved the state of their burden to prove the absence of the defense beyond a reasonable doubt.

The superior courts new findings of fact and conclusions of law support the charge of the lesser included offense criminal trespass, therefore Mr. Williams residential burglary conviction should be reversed and remanded for a new trial.

4. Did the State violate the Constitution redacting exculpatory evidence to pro se litigant supporting the fact findings and conclusion of law that the alleged victim no longer resided at the alleged burglarized address?

During discovery the prosecuting attorney is bound by a set of obligations, among them are: CrR 4.7(1)(i) DISCOVERY

(1) Except as otherwise provided by protective orders or as to matters not subject to disclosure, the prosecuting attorney shall disclose to the defendant the following material and information within the prosecuting attorney's possession or control no later than the omnibus hearing:

- (i) the names and addresses of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial, together with any written or recorded statements and the substance of any oral statements of such witnesses;

The prosecuting attorney in Mr. Williams case did not adhere to these obligations which is a violation of his constitutional right to due process. "No state shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, section 1.

Ms. Timmins the legal owner of 523 North Ely Street testified that she left the property of her own free will and was aware her house was abandoned when she left it with no intention going back to the home. RP (Feb. 16, 2016) at 26, 28-29. Both Det. Runge and Ms. Lusignan testified to having communication with one another in regards to the 523 North Ely Street property. Ms. Lusignan stated: So I notified Detective Runge that we may have a similar situation to what we had in the past and the information I had at that minute and just letting law enforcement know there may be something to investigate. RP (Feb. 16, 2016) at 129.

What the prosecuting attorney redacted was parts of an email from Ms Lusignan to Det. Runge on September 25, 2015 at 4:43 PM. Which was later obtained through a public disclosure request.

It reads unreacted as such:

“ I received a call from the PUD today asking if we knew Corey Williams was requesting service again - 523 N Ely St. I look [sic] in our database and we did have a sign in for service yesterday

under THE C. WILLIAMS GROUP LLC. This house has been vacant for nearly 2 years. The current owner information in the Benton County database is Gail & Joseph Timmins. The utility account for Gail Timmins was closed December 2013 and the account has been inactive until now. Both the PUD and our records have outdated telephone contact information for Ms. Timmins although we do know where Ms. Timmins resides: 8180 W. 4th AVE, Apt #M106 Mr. Williams may have a valid reason to be establishing service at this property but it is concerning, based on his previous brazen activities, that he is establishing service at a perviously long-term vacant home. Not sure what steps we should take, if any, to validate what he is doing. It would be nice to be able to talk to Ms. Timmins. I think I found her on LinkedIn and I sent a connection request. If she accepts I am going to try and contact her.”

...

Det. Runges' Investigation report dated 10/5/2015 lists under the victims section Ms. Timmins address as 523 N Ely St, Kennewick, WA 99336 while Ms. Timmins is the legal owner of the property she had a permanent address other than the home she testified to abandoning.

The state is also in violation of ER 1001 (a), ER 1002 as well as RPC 3.8(d) SPECIAL RESPONSIBILITIES OF A PROSECUTOR which states:

The prosecutor in a criminal case shall:

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense and, in connection with sentencing, disclose to the defense and to the tribunal all mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

Because Mr. Williams was proceeding pro se he was entitled to all evidence pretrial therefore the residential burglary conviction should be reversed and remanded for a new trial.

According to the provisions in RAP 18.1(b), RPC 1.5, RAP 2.4 (g) and RAP 4.2, the appellant respectfully requests this Court to award the recovery of his reasonable attorney fees and expenses. Attorney fees are calculated at 11, 080 hours billed at \$200.00 per hour totaling \$2, 216, 000. Expenses are calculated at 1,400 days billed at \$25.44 per day

totaling \$ 35, 616. The combined total amount requested is \$2, 251, 616. In *Leen v. Demopolis*, 62 Wn. App. 473, 815 P.2d 269 (1991), the court held that pro se attorneys could recover attorney fees where fees are otherwise justified because they must take time from their practices to prepare and appear as any other lawyer would. *Leen*, 62 Wn. App. At 487.

E). CONCLUSION

The trial court erred in denying Mr. Williams a timely arrest of judgment motion hearing and his constitutional right to due process.

The trial court erred and relieved the state of their mandatory burden to prove every element of residential burglary beyond a reasonable doubt when entering in “knowledge” in place of “intent” in the new findings of fact and conclusions of law.

The trial court erred by not weighing in evidence and testimony in a factual hearing about abandonment when bringing in a new finding of facts and conclusions of law outside of the jury verdict.

The state redacted exculpatory evidence from Mr. Williams that violated his constitutional rights to due process and a right to a fair trial.

It is for these reasons and those contained herein, that this Court should reverse Mr. Williams’ convictions, vacate and remand for entry of

an order dismissing the convictions, or in the alternative enter in an order
modifying the judgment entering in criminal trespass based on the
Superior Court Judges' findings of facts and conclusions of law.

DATED this 18th day of November, 2019.

Corey - J: Williams, w/o prejudice

Corey-J: Williams, pro se, without prejudice

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DOC # 864621

Coyote Ridge Corrections Center

P.O. Box 769

Connell, WA 99326

DECLARATION OF SERVICE

I declare that on the 18th day of November, 2019, I caused a true and correct copy of this Appellant's Brief to be served on the following in the manner indicated below:

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