

66836-6

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COA No. 66836-6-I

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

STATE OF WASHINGTON,

Respondent,

v.

RICHARD SWEAT,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF KING COUNTY

The Honorable Mariane Spearman

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 JAN 17 PM 4:46

REPLY BRIEF

OLIVER R. DAVIS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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A. SUMMARY OF APPEAL

Under the SRA, the “pattern of abuse” aggravating factor of RCW 9.94A.535(3)(h)(i), read with the statutory definition of “victim” at RCW 9.94A.030(53), is limited to circumstances where the defendant’s current offense is part of an ongoing pattern of abuse of the same victim(s).

The evidence submitted at Mr. Sweat’s bench trial insufficient to prove the aggravating factor that the crime charged was part of a pattern of abuse of the victim, where the prior incidents submitted to prove the factor consisted merely of the defendant’s prior convictions for crimes against past complainants, unconnected to the present charge.

B. REPLY ARGUMENT

THE PLAIN LANGUAGE OF THE SRA INDICATES THE STATE’S EVIDENCE WAS INSUFFICIENT TO PROVE THE SOLE AGGRAVATING FACTOR.

Based on his current offense and his criminal history, Mr. Sweat’s standard sentencing range was 43 to 57 months. During the aggravating factor portion of Mr. Sweat’s bench trial, the prosecutor submitted judgments reflecting prior Washington convictions for assault and other offenses committed against complainants unconnected to the current offense of conviction.

1/12/10RP at 377- 90; Supp. CP ____, Sub # 43A (State's exhibits 15, 16, 17; 18, 19, 20, 21, 22); see also CP 42-49.

This evidence was inadequate and the court erred in entering Conclusions of Law I.b and II. Supp. CP ____, Sub # 60. Mr. Sweat's prior convictions fail to establish the aggravating factor where the prior incidents did not involve the same victim, Kellie Kenworthy, as the currently charged offense for which the defendant was being sentenced.

The SRA's plain language clearly and unambiguously establishes that various other complainants plucked from past cases in Mr. Sweat's criminal history do not constitute "victims" for purposes of aggravating the defendant's current offense under RCW 9.94A.535(3)(h)(i).

RCW 9.94A.030, the definitional section of the SRA, provides that "[u]nless the context clearly requires otherwise," the term "victim" is defined as follows:

"Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(Emphasis added.) RCW 9.94A.030(53). The State does not dispute that the term victim is defined by the SRA as referring to the

victim or victims of the current offense, but contends that the term “multiple victims” must be read to include the victims of the defendant’s prior convictions. BOR at 7. This contention must be rejected. Pursuant to Laws 1990, ch. 3, § 602, the definition of “victim” was expanded to include those who have sustained emotional or psychological injury as a result of the charged crime.

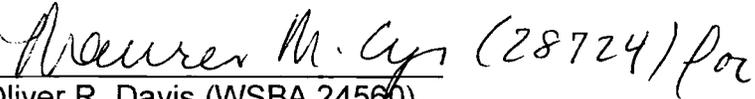
Plainly, however, the definition of victim makes clear that complainants from prior convictions do not qualify as victims for purposes of the SRA's "pattern of abuse" aggravating factor unless they are the same person as the victim of the current crime, here, Ms. Kenworthy.

The State cites no authority for the proposition that using the term “victim” in the plural (“multiple victims”) changes the definition of the statutory term. Certainly, a defendant’s current offenses may involve one, or more, victims. However, the SRA authorizes aggravated punishment only on the basis of victims of the current offenses, and legislative definitions included in a statute are controlling. State v. Watson, 146 Wn.2d 947, 954–55, 51 P.3d 66 (2002).

C. CONCLUSION

Based on the foregoing and on his Appellant's Opening Brief, Mr. Sweat respectfully requests this Court reverse the judgment and sentence of the trial court.

Respectfully submitted this 17th day of January, 2012.


Oliver R. Davis (WSBA 24560)
Washington Appellate Project - 91052
Attorneys for Appellant

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DIVISION ONE**

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| STATE OF WASHINGTON, |) | |
| |) | |
| Respondent, |) | |
| |) | NO. 66836-6-I |
| v. |) | |
| |) | |
| RICHARD SWEAT, |) | |
| |) | |
| Appellant. |) | |

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 17TH DAY OF JANUARY, 2012, CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE COURT OF APPEALS - DIVISION ONE AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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| APPELLATE UNIT | () | _____ |
| 516 THIRD AVENUE, W-554 | | |
| SEATTLE, WA 98104 | | |

SIGNED IN SEATTLE, WASHINGTON THIS 17TH DAY OF JANUARY, 2012.

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Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710