

FILED
SUPREME COURT
STATE OF WASHINGTON
8/7/2023 1:57 PM
BY ERIN L. LENNON
CLERK

Supreme Court No. 102157-7

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,
Respondent,

v.

SCOTT ALLEN BRITTON,
Petitioner.

ANSWER TO PETITION FOR REVIEW

ERIC EISINGER
Prosecuting Attorney
for Benton County

TERRY BLOOR
Deputy Prosecuting Attorney
WSBA No. 9044
OFFICE ID 91004

7122 West Okanogan Place
STE A230
Kennewick WA 99336
(509) 735-3591

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. ISSUES PRESENTED FOR REVIEW 2

III. STATEMENT OF THE CASE..... 2

IV. ARGUMENT 5

 A. The Linn County case and the Benton County, Oregon cases are comparable to Washington State’s First-Degree Robbery statute, which makes the defendant’s argument irrelevant..... 5

 B. There is adequate evidence that the defendant completed at least a Robbery in the Second Degree in both cases 8

 C. The defendant’s citations are either not on point or do not challenge the Court of Appeals’ decision..... 8

V. CONCLUSION 10

TABLE OF AUTHORITIES

WASHINGTON CASES

<i>In re Lavery</i> , 154 Wn.2d 249, 111 P.3d 837 (2005)	8-9
<i>State v. Ortega</i> , 120 Wn. App. 165, 84 P.3d 935 (2004).....	8
<i>State v. Releford</i> , 148 Wn. App. 478, 200 P.3d 729 (2009)	9
<i>State v. Rigsby</i> , 49 Wn. App. 912, 747 P.2d 472 (1987)	10

WASHINGTON STATUTES

RCW 9.94A.030 (58)(a)(i)	6
RCW 9.94A.525 (9)	6
RCW 9A.56.190	7
RCW 9A.56.200 (1)	6
RCW 9A.56.200 (1)(a)(ii)	6
RCW 9A.56.200 (1)(a)(ii)	7
RCW 9A.56.200 (2)	6

OTHER AUTHORITIES

<i>Richardson v. Williard</i> , 241 Or. 376, 406 P.2d 156 (1965)	9
<i>State v. Hetland</i> , 31 Or. App. 529, 570 P.2d 1201 (1977)	9
<i>State v. Kappelman</i> , 162 Or. App. 170, 986 P.2d 603 (1999) ...	9

I. INTRODUCTION:

The defendant challenged the offender score calculation in the trial court and at the Court of Appeals. The defendant at the Court of Appeals did not dispute the trial court's calculation for a Robbery in the Second Degree in Snohomish County, WA (2 points), a conviction from Linn County, Oregon which went to trial and is comparable to our Robbery in the First Degree but was charged as a Robbery in the Second Degree (2 points), or the current offense of Arson in the First Degree (2 points).

The defendant disputes the inclusion in his offender score two Robbery convictions in Linn County, Oregon. In both cases he used a firearm to prevent resistance to his taking money from individuals. The defendant entered a plea of guilty and a plea of no-contest to these charges. The Court of Appeals correctly used caselaw to analyze whether the Robbery convictions in Oregon were comparable to the Washington robbery statute.

II. ISSUES PRESENTED FOR REVIEW

Is there a conflict between the Court of Appeals decision, which held that there was factual comparability from the Oregon Robbery convictions, with decisions of this Court?

III. STATEMENT OF THE CASE

The defendant was found guilty of three Robbery convictions in Oregon in the late 1980s to early 1990s.

Crime	Offense Date	Date of sentencing	County / State	Cause No.	Clerk's Paper
Robbery in the Second Degree	9/13/88	3/19/91	Linn Co, OR	89-030471	CP 24-27
Robbery in the Second Degree	12/24/89	10/2/90	Linn Co., OR	89-0304073	CP 29-32
Robbery in the Second Degree	1/24/89	3/15/89	Benton Co, OR	89-0111	CP 33-34, 301

The Linn County, Oregon, cause number 89-030473:

The defendant is not contesting the comparability of this crime. He was charged with Robbery in the First Degree on December 24, 1988,

unlawfully and knowingly threaten the immediate use of physical force upon Todd L. Coughran, by displaying a pistol, and was armed with a deadly weapon, to wit: a pistol, while in the course of committing theft of property, to-wit: money, with the intent of preventing resistance to the said defendant's taking and retention immediately after the taking of the said property, and during the commission of this felony, the defendant personally threatened the use of a firearm, to wit: a pistol

CP 98.

A transcript of this trial shows that the defendant on December 24, 1988, at 3:30 A.M. walked into an Albertsons store and then opened his coat and put his hands on a revolver and told the clerk to give him all the money in the till. CP 426-27. The clerk did so, and the defendant fled. CP 429.

The Oregon District Attorney amended the charge from First-Degree Robbery to Second-Degree Robbery because the defendant "displayed the weapon and did not point the weapon" CP 547.

Concerning Linn County, OR., Cause Number 89-030471: The Indictment, dated March 1, 1991, is attached as

App. A. in the State's brief to the Court of Appeals. It is also CP 27. The Indictment charges the defendant with Robbery in the Second-Degree, (the typed portion charges First Degree, but "First" is crossed out and "Second" interlineated) with a firearm, specifically charging that on September 13, 1988, the defendant

unlawfully and knowingly threaten the immediate use of physical force upon Robin L. Myers, by [interlineated by handwriting] *representing by word or conduct that defendant* [crossed out: ~~displaying a pistol~~] was armed with a deadly weapon, to wit: a pistol, while in the course of committing theft of property, to wit: money, with the intent of preventing resistance to the said defendant's taking and retention immediately after the taking of said property, and during the commission of this felony, the defendant personally threatened the use of a firearm, to wit: a pistol

CP 102.

He entered a plea of no-contest to this charge on February 14, 1991. CP 307-11.

Concerning the Benton County, OR., cause number 89-0111:

The documents pertaining to this case are also attached as

Appendix C in the State's Brief. The Indictment charges:

(he) did unlawfully and knowingly threaten the immediate use of physical force upon KENNETH A. RICHEY by displaying deadly weapon, a .22 caliber revolver, with which the said defendant was armed, while in the course of committing theft of property, to wit: money, with the intent of compelling KENNETH A. RICHEY to deliver the property to the defendant.

CP 301.

He was also charged with a second count, Theft in the Second-Degree, for unlawfully and knowingly committing the theft of money in an amount over \$50.00. CP 301.

He entered a plea of guilty to this charge on March 23, 1989. CP 303-04. Possibly in exchange for this plea, the Theft in the Second-Degree charge was dismissed.

IV. ARGUMENT

- A. The Linn County case and the Benton County, Oregon cases are comparable to Washington State's First-Degree Robbery statute, which makes the defendant's argument irrelevant.**

The defendant argues that the Linn County case, No. 89-030471, and the Benton County, OR, case might be attempted robberies, because there was no colloquy in which he acknowledged that he actually completed the robbery. PRV at 12-13.

However, this argument overlooks that an attempted robbery in the first degree under Washington law is included in the definition of a “violent offense” under RCW 9.94A.030 (58)(a)(i) because first degree robbery is a class A felony, RCW 9A.56.200 (2). As such it would have added two points to the offender score under RCW 9.94A.525 (9).

The crime alleged in Linn County would constitute a First-Degree Robbery under RCW 9A.56.200 (1). The defendant represented by words or conduct he had a firearm, which is comparable to RCW 9A.56.200 (1)(a)(ii) “displays what appears to be a firearm” He did so while threatening another person with physical

force in order to steal money, which is comparable to the definition of Robbery in RCW 9A.56.190.

Here is the Indictment from Linn County, Or:

unlawfully and knowingly threaten the immediate use of physical force upon Robin L. Myers, by [interlineated by handwriting] *representing by word or conduct that defendant* [crossed out: ~~displaying a pistol~~] was armed with a deadly weapon, to wit a pistol, while in the course of committing theft of property, to wit: money, with the intent of preventing resistance to the said defendant's taking and retention immediately after the taking of said property, and during the commission of this felony, the defendant personally threatened the use of a firearm, to wit: a pistol

CP 102.

Likewise, the Benton County, OR is comparable to Washington's RCW 9A.56.200 (1)(a)(ii). The

Indictment there states:

(he) did unlawfully and knowingly threaten the immediate use of physical force upon KENNETH A. RICHEY by displaying deadly weapon, a .22 caliber revolver, with which the said defendant was armed, while in the course of committing theft of property, to wit: money, with the intent of compelling KENNETH A. RICHEY to deliver the property to the defendant.

CP 301.

Again, the defendant used a firearm to physically force and compel the victim to give him money.

B. There is adequate evidence that the defendant completed at least a Robbery in the Second Degree in both cases.

The State believes this is discussed adequately in the Court of Appeals' decision on pages 13-14 regarding the Linn County conviction and on pages 15-16 regarding the Benton County, OR conviction. The defendant was charged with theft, not attempted theft.

C. The defendant's citations are either not on point or do not challenge the Court of Appeals' decision.

The defendant specifically cites *State v. Ortega*, 120 Wn. App. 165, 84 P.3d 935 (2004) and *In re Lavery*, 154 Wn.2d 249, 111 P.3d 837 (2005) as cases the Court of Appeals decision deviated from. Both cases are not directly applicable in this case. *Ortega*, 120 Wn. App. at 167, dealt with the comparability of a Texas conviction for indecency with a child

to a Washington crime for purposes of a persistent offender. *Lavery*, 154 Wn.2d at 252, dealt with whether a federal bank robbery conviction was comparable to Washington’s Second-Degree Robbery law.

The defendant also does not challenge the Court of Appeals’ citation to *State v. Releford*, 148 Wn. App. 478, 489, 200 P.3d 729 (2009) that a reviewing court should “look to the law of the state in which the defendant entered the plea as that law existed at the time of the plea—that is, the law from which the defendant could reasonably expect the consequences of the guilty plea to flow.”

The Court of Appeals’ citations to *Richardson v. Williard*, 241 Or. 376, 378, 406 P.2d 156 (1965), *State v. Kappelman*, 162 Or. App. 170, 175, 986 P.2d 603 (1999), and *State v. Hetland*, 31 Or. App. 529, 534-35, 570 P.2d 1201 (1977), while criticized by the defendant, stand for the general rule that a plea of guilty is a judicial admission of all the material allegations in the indictment. Washington has the

same rule. *State v. Rigsby*, 49 Wn. App. 912, 914, 747 P.2d 472 (1987). A defendant should not expect anything other than this. If he pleads guilty, he is admitting the material elements of the crime.

V. CONCLUSION

Accordingly, the petitioner for review should be denied. This document contains 1,549 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 7th day of August, 2023.

ERIC EISINGER
Prosecutor



Terry J. Bloor,
Deputy Prosecuting Attorney
WSBA No. 9044
OFC ID NO. 91004

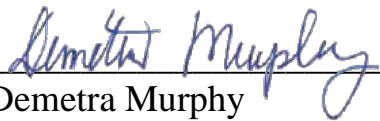
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

Marie Trombley
P.O. Box 829
Graham, WA 98338

E-mail service by agreement was made to the following parties:
marietrombley@comcast.net

Signed at Kennewick, Washington on August 7, 2023.



Demetra Murphy
Appellate Secretary

BENTON COUNTY PROSECUTOR'S OFFICE

August 07, 2023 - 1:57 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 102,157-7
Appellate Court Case Title: State of Washington v. Scott Allen Britton
Superior Court Case Number: 96-1-00468-9

The following documents have been uploaded:

- 1021577_Answer_Reply_20230807135642SC310648_8294.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was 1021577 Britton - PRV response.pdf

A copy of the uploaded files will be sent to:

- marietrombley@comcast.net
- valerie.marietrombley@gmail.com

Comments:

Sender Name: Demetra Murphy - Email: deme.murphy@co.benton.wa.us

Filing on Behalf of: Terry Jay Bloor - Email: terry.bloor@co.benton.wa.us (Alternate Email: prosecuting@co.benton.wa.us)

Address:

7122 W. Okanogan Place
Kennewick, WA, 99336
Phone: (509) 735-3591 EXT 3348

Note: The Filing Id is 20230807135642SC310648