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COURT OF APPEALS
DIVISION II

2013 SEP 26 AM 11:49

STATE OF WASHINGTON

STATE OF WASHINGTON
BY [Signature]
DEPUTY

Cause # 43706-6

vs.

Mr. Robert Hill
appellant

Defendant's Statements
of Additional Grounds

1. Identity of Party → Robert Hill, defendant.
2. Issue # 1: Did trial judge improperly ignore and discard defendant's timely-filed Affidavit of Prejudice and motion therefor?

Issue # 2: Was there "intent to make contact" on any of the three victims?

Issue # 3: Was there intent by defendant to assault any of the three victims?

Issue # 4: Was there "consent" to being touched by any or all of the alleged victims?

3. ARGUMENT & DISCUSSION

A)
Issue #1

On the morning of Thursday, August Twelfth, 2012, I was assigned Katherine Stolz. I didn't know beforehand she would be assigned. After moving to her courtroom for 1:30 trial to commence, I submitted an Affidavit of Prejudice. She took it to her chambers; and then came out and said she was denying it, claiming she made "discretionary rulings" earlier in the case: A) setting bail; and B) postponing trial. These are particularly-listed as being actions excluded from discretionary rulings.

Session law 1911, chapter 121 first set out a procedure for judges who are prejudiced to have cases moved to a different department. Session law 1927 chapter 145, section 2 substantially clarified the process, setting a time limit, and defining "discretionary rulings" and providing four exceptions (Session law 1941 chapter 148 made some minor additions.)

Setting of bail is one of the four listed exclusions. The arrangement of the calendar "... shall not be construed as a ruling or order involving discretion within the meaning of this provision postponing, or extending trial date, is "an arrangement of the calendar. Therefore, I should get a new trial with a new judge.

B) Issue # 2

I had paid \$200 to have the room, and \$75. - for a sound engineer, from 6p until 2am closing, in the upstairs of a bar, called Stonegate. It has been in the media for temporarily allowing cannabis smokers a place to use since the passage of I. 502.

The first person to try to pull me down the stairs and kick me out was Jamie, the owner's daughter and acting manager. She grabbed my right hand. The other woman grabbed my left hand. In their tussling, they both

brought my hands near their chest or upper torso. I clearly was pulling opposite to undo their grasps. I'm restrained by them and only incidentally touch the man, Rick, with my shoulders, going down the stairs.

In *State vs Karen Jarvis*, #39588-6, 160 Wash. App. 111 (2010), discussion was about "intent to make contact." I believe this applies here. Assault Fourth Degree is an unwanted physical touching not amounting to that of the other three degrees. Intent to commit is construed to exist in the elements of the charging statements. My actions were self-defense; I didn't ask the women to grab my hands. The customers had no business in the area. The assault charges should be dismissed.

c) Issue #3

State v. Jerry Lee Jones, 34 Wn. App. 848 (1983) states that "intent" is necessary to be proved for any assault. (State v. Finley, 97 Wash. App. 129.) RCW 9A.08.010 section (1)(b)(i) defines "knowingly" as "...when he is aware of a fact, or facts, or circumstances or result described by a statute defining an offense. I was not trespassing in the building. The manager thought I was, but she didn't make the arrangements. The first contact of the women was to stop me from jumping up-and-down and blowing my whistle. I did not initiate contact against them.

b) Issue #4

State v. Baxter, 134 Wash. App. 587, # 32766-0, outlines when consent to touching may be considered:

"the nature of the act, the surrounding circumstance, and public policy. The STONEGATE IS A TAVERN. The staff presumably make physical contact with patrons everyday, and vice versa, with no criminality ensuing. They work where is it somewhat expected. This contrasts to the basketball game of State v. Skelley, 85 Wash.App 24, where violation was hit in the face in a manner and part of the game that the contact was not consented. The alleged victims can't claim that they were preventing me from causing mere harm (to other microwaves or thermoses) and then claim assault. The two customers weren't invited upstairs be either me or Jeff Coll's daughter. The element of Intent does not lie and these counts should be dismissed

DATED: Tuesday,
September Twenty-fourth
A.D. 2013

AMRH: A
Mr. Robert Hill

A

SESSION LAWS, 1941.

where no submission shall be necessary, the common council or other corporate authorities of such city or town shall have power to proceed forthwith to purchase, construct and acquire the public utility contemplated or to make additions, betterments and extensions thereto and to make payment therefor as hereinafter provided in section 3 and 4 hereof.

Procedure when no election.

Passed the House February 27, 1941.
Passed the Senate March 11, 1941.
Approved by the Governor March 21, 1941.

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STATE OF WASHINGTON

CHAPTER 148.
[H. B. 152.]

DISQUALIFICATION OF JUDGES OF SUPERIOR COURTS.
AN Act relating to the disqualification of Judges of the Superior Courts, amending section 2 of chapter 145 of the Laws of 1927 (section 209-2 Remington's Revised Statutes).

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That section 2 of chapter 145 of the Laws of 1927, page 129 (section 209-2 of Remington's Revised Statutes), be amended to read as follows:

Amendments.

Section 2. Any party to or any attorney appearing in any action or proceeding in a Superior Court, may establish such prejudice by motion, supported by affidavit that the Judge before whom the action is pending is prejudiced against such party or attorney, so that such party or attorney cannot, or believes that he cannot, have a fair and impartial trial before such Judge: *Provided*, That such motion and affidavit is filed and called to the attention of the Judge before he shall have made any ruling whatsoever in the case, either on the motion of the party making the affidavit, or on the motion of any other party to the action, of the hearing of which the party

Affidavit of prejudice.

Proviso.

Hill - S.A.C. : Appendix

Exceptions.

making the affidavit has been given notice, and before the Judge presiding has made any order or ruling involving discretion, but the arrangement of the calendar, the setting of an action, motion or proceeding down for hearing or trial, the arraignment of the accused in a criminal action or the fixing of bail, shall not be construed as a ruling or order involving discretion within the meaning of this proviso; and in any event, in counties where there is but one resident Judge, such motion and affidavit shall be filed not later than the day on which the case is called to be set for trial: And provided further, That notwithstanding the filing of such motion and affidavit, if the parties shall, by stipulation in writing agree, such Judge may hear argument and rule upon any preliminary motions, demurrers, or other matter thereafter presented: And provided, further, That no party or attorney shall be permitted to make more than one such application in any action or proceeding under this act.

Limited to one motion.

Passed the House March 12, 1941.

Passed the Senate March 12, 1941.

Approved by the Governor March 21, 1941.

CHAPTER 149.

[H. B. 205.]

CODE COMMITTEE.

AN ACT to make uniform and perpetual the citations of laws of this state for all compilations and codifications thereof and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Code Committee created.

SECTION 1. The State Law Librarian, the Law Librarian of the University of Washington, and the Executive Secretary of the Judicial Council are

Sale of livestock for charges.

Notice.

Section 1981. If said property consists of live stock, the maintenance of which at the place where kept is wasteful and expensive in proportion to the value of the animals, or consists of perishable property liable, if kept, to destruction, waste or great depreciation, the person, firm or corporation having such lien may sell the same upon giving ten days' notice.

Passed the Senate January 19, 1927.

Passed the House February 2, 1927.

Approved by the Governor February 16, 1927.

CHAPTER 145.

[S. B. 64.]

CHANGE OF VENUE OR OF JUDGES.

AN ACT relating to the disqualification of judges of the superior courts, and providing for change of venue or change of judges on account thereof, and amending Chapter 121 of the Laws of 1911.

Be it enacted by the Legislature of the State of Washington:

§ 1, Ch. 121,
L. 1911;
§ 209-1 Rem.
Stats.;
§ 8546,
Pierce's
1919 Code.

SECTION 1. That section 1 of chapter 121 of the Laws of 1911, page 617 (section 209-1 of Remington's Compiled Statutes; section 8546 of Pierce's 1919 Code), be amended to read as follows:

Judge
prejudiced.

Section 1. No judge of a superior court of the State of Washington shall sit to hear or try any action or proceeding when it shall be established, as hereinafter provided, that such judge is prejudiced against any party or attorney, or the interest of any party or attorney appearing in such cause. In such case the presiding judge shall forthwith transfer the action to another department of the same court, or call in a judge from some other court, or apply to the governor to send a judge, to try the

Transfer to
another
judge.

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case; or, if the convenience of witnesses or the ends of justice will not be interfered with by such course, and the action is of such a character that a change of venue thereof may be ordered, he may send the case for trial to the most convenient court: *Provided*, That in criminal prosecutions the case shall not be sent for trial to any court outside the county unless the accused shall waive his right to a trial by a jury of the county in which the offense is alleged to have been committed.

When change of venue.

Condition for change in criminal prosecutions.

SEC. 2. That section 2 of chapter 121 of the Laws of 1911, page 617 (section 209-2 of Remington's Compiled Statutes; section 8547 of Pierce's 1919 Code), be amended to read as follows:

§ 2, Ch. 121, L. 1911; § 209-2, Rem. Stats.; § 8547, Pierce's 1919 Code.

Section 2. Any party to or any attorney appearing in any action or proceeding in a superior court, may establish such prejudice by motion, supported by affidavit that the judge before whom the action is pending is prejudiced against such party or attorney, so that such party or attorney cannot, or believes that he cannot, have a fair and impartial trial before such judge: *Provided*, That such motion and affidavit is filed and called to the attention of the judge before he shall have made any ruling whatsoever in the case, either on the motion of the party making the affidavit, or on the motion of any other party to the action, of the hearing of which the party making the affidavit has been given notice, and before the judge presiding has made any order or ruling involving discretion, (but the arrangement of the calendar, the setting of an action, motion or proceeding down for hearing or trial, the arraignment of the accused in a criminal action or the fixing of bail, shall (not) be construed as a ruling or order involving discretion within the meaning of this proviso: *And provided*, further, That no party or attorney shall be permitted to make more than one

Affidavit of prejudice.

Time motion and affidavit must be filed.

Only one application.



such application in any action or proceeding under this act.

Passed the Senate January 21, 1927.

Passed the House February 2, 1927.

Approved by the Governor February 16, 1927.

CHAPTER 146.

[S. B. 65.]

CORPORATION FEES.

AN ACT relating to fees to be paid to the Secretary of State by corporations, and repealing Chapter LXX of the Laws of 1897.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That chapter LXX (70) of the Laws of 1897, pages 134-135, is hereby repealed.

Passed the Senate January 19, 1927.

Passed the House February 2, 1927.

Approved by the Governor February 16, 1927.

Statute
repealed.

CHAPTER 147.

[S. B. 66.]

VACANCIES IN THE OFFICE OF JUSTICES OF THE PEACE.

AN ACT relating to vacancies in the office of justices of the peace, and repealing certain acts in relation thereto.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That sections 1696 to 1701, both inclusive, of the Code of Washington Territory of 1881, are hereby repealed.

Passed the Senate January 19, 1927.

Passed the House February 2, 1927.

Approved by the Governor February 16, 1927.

Statutes
repealed.

CHAPTER 121.

[S. B. 230.]

RELATING TO DISQUALIFICATION OF JUDGES OF
SUPERIOR COURTS.

AN ACT relating to the disqualification of judges of the superior courts, and providing change of venue or change of judges on account thereof.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. No judge of a superior court of the State of Washington shall sit to hear or try any action or proceeding when it shall be established, as hereinafter provided, that such judge is prejudiced against any party or attorney, or the interest of any party or attorney appearing in such cause. In such case the presiding judge shall forthwith transfer the action to another department of the same court, or call in a judge from some other court, or apply to the governor to send a judge, to try the case; or, if the convenience of witnesses or the ends of justice will not be interfered with by such course, and the action is of such a character that a change of venue thereof may be ordered, he may send the case for trial to the most convenient court.

[See §§
209-210,
Rem.-Bal.]

Prejudice
established.

Order change
of venue.

SEC. 2. Any party to or any attorney appearing in any action or proceeding in a superior court, may establish such prejudice by motion supported by affidavit that the judge before whom the action is pending is prejudiced against such party or attorney, so that such party or attorney cannot, or believes that he cannot, have a fair and impartial trial before such judge: *Provided, further,* That no party or attorney shall be permitted to make more than one application in any action or proceeding under this act.

[See §§
209-210,
Rem.-Bal.]

Establish
by affidavit

Passed by the Senate February 21, 1911.

Passed by the House March 9, 1911.

Approved by the Governor March 18, 1911.