

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY  DEPUTY

No. 44487-9-II

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

LARDELL COURTNEY,

Appellant,

v.

STATE OF WASHINGTON,

Appellee,

STATEMENT OF ADDITIONAL GROUNDS, RAP 10.10

LARDELL COURTNEY

DOC# 944037 UNIT: G-B-10

Stafford Creek Corrections Center

191 Costantine Way

Aberdeen, Washington 98520

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A. ASSIGNMENT OF ERRORS

1. The evidence does not support the charges of Second Degree Robbery and Third Degree Assault.

2. INEFFECTIVE ASSISTANCE OF COUNSEL, Trial attorney Dave Shaw gave less then effective assistance when he failed to put on any meaningfully defense.

Issues Pertaining to Assignment of Errors

1. The State did not prove all of the elements of Second Degree Robbery and the State did not show what Assault elevated Theft to Robbery.

2. Trial attorney Dave Shaw did not interview the loss prevention officers, the police officers, or even review the police reports before trial. Attorney Dave Shaw took the burden of proving each and ever element of the crime of second degree robbery from the State when he stipulated to the Theft, at closing in front of the jury. Dave Shaw, failed to abide by his client's wishes on the course of action at trial. The defendant asked attorney Dave Shaw to file a motion for dismissal on the grounds of speedy trial violations.

B. STATEMENT OF THE CASE

The petitioner would agree with his counsels statement of the case.

C. Argument

1. The evidence does not support the charge of Second Degree Robbery.

Defendant may challenge sufficiency of evidence before trial, at end of State's case in chief, at end of all evidence, and on appeal. STATE v. JACKSON, 82 Wn.App. 594, 918 P.2d. 945

RCW 9A.56.190 ROBBERY

A person commits Robbery when he or she unlawfully takes Personal Property from the Person of another or in His or Her Presence against His or Her will by the use or threatened use of immediate "Force, Violence, or Fear of Injury" to that person or His or Her Property or the person or property of anyone. Such Force or Fear must be used to Obtain or Retain Possession of the Property, or to Prevent or Overcome the Resistance to the Taking. In either of which cases the degree of Force is immaterial. Such taking constitutes Robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, or such knowledge was prevented by the use of Force or Fear. In administration of criminal law, two distinct elements are held to be necessary to crime of Robbery: (1) putting victim in fear of violence to His or Her person or property; and (2) taking of money, property or thing of value from His or Her Person or in His or Her Presence. STATE v. NAM, 136 Wn.App. 689, 150 P.3d. 617

WASHINGTON PRACTICE SERIES 13B CHAPTER 23 ROBBERY

(a) Under Washington Law, robbery comprises unlawfully taking personal property either from (a) the person of another. or

(b) In the person's presence against the person's will to be Robbery, the act must be accomplished by use or threatened use of immediate Force, Violence, or Fear of Injury to the person or property of anyone. The Force or Fear must be used either to Obtain or Retain possession of the property or to prevent or overcome resistance to the taking. In either case, the degree of force is immaterial. Such taking constitutes Robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, or such knowledge was perverted by the use of force or fear. Robbery as so defined is second degree robbery, which is a class B felony.

WPIC 37.04 ROBBERY IN THE SECOND DEGREE

1. That on or about _____ the defendant unlawfully took personal property from a person or in the presence of another.
2. That defendant intended to commit theft of the property.
3. That the taking was against that person's will by the defendant's use or threatened use of immediate Force, Violence, or Fear of Injury to that person or to that person's property, or to the property of another.
4. That Force or Fear was used by the defendant to obtain or retain possession of the property or to prevent knowledge of the taking.
5. That any of these acts occurred in the State of Washington.

Washington case law has not directly addressed the meaning of "from the person of another" with regard to the Theft statutes. In context of Robbery however, the Court of Appeals has held that property taken "from the person of another" means that the property has to be "on the persons body or directly attached to someone's physical body or clothing." STATE v. NAM, 136 Wn.App. 698, 705, 150 P.3d. 617 (Div. 2 (1-17-2007))

For purposes of robbery statute, personal property is within victim's "presence" when it is within victim's reach, inspection, observation, or control, that victim could, if not overcome with Violence or prevented by Fear, retained possession of it. RCW 9A.56.190

Where the State assumes the burden of proof on an element and the Appellate Court must reverse the conviction and dismiss with prejudice. STATE v. NAM 136 Wn.App. 698, 705, 150 P.3d. 617

Third degree assault is not a lesser included offense of Robbery, the requirement that defendant specifically intend to prevent or resist apprehension or detention is a necessary element for Third Degree Assault but not for Robbery. STATE v. HERRERA, 95 Wn.App. 328, 977 P.2d. 12 (1998)

WPIC 2.24 THREAT

Threat means to communicate, directly or indirectly, the intent to cause Bodily Injury in the future to the person threatened or to any other person.

Here as in State v. Johnson Jr., 155 Wn.2d. 609, 121 P.3d. 91 (2005) the evidence is insufficient to support the conviction because he did not use force to obtain or retain property, but

rather used force while attempting to escape after (losing or) abandoning the property. The Court of Appeals affirmed Johnson's conviction, concluding Robbery included the use of force while attempting to Escape or Resist Apprehension following a Theft. The (Washington Supreme Court) disagreed with the Court of Appeals attempt to broaden the transactional view of Robbery beyond the statutory elements of the crime.

RCW 9A.36.031 (1)(a), RCW 9A.56.190 Third Degree Assault is not a lesser included offense of Robbery; the requirement that the defendant specifically intend to prevent or resist apprehension or detention is a necessary element of Third Degree Assault but not for Robbery.

RCW 9A.36.031 (1)(a), (formerly) RCW 9A.36.030 Includes the Assault of a Store Employee who attempts to detain a person on suspicion of shoplifting. STATE v. MILLER, 103 Wn.2d. 792,793-95, 698 P.2d. 554 (1985). This section expressly requires a specific intent to prevent or resist apprehension or detention.

Applying the first part of the Workman / Berlin test, this method of committing Third Degree Assault is only a lesser included offense of Robbery if each element of the lesser offense is also elements of the offense charged. A person commits Robbery by using or threatening force to obtain or retain property, or to overcome the resistance to the taking. RCW 9A.56.190. It is necessary that the person specifically intend to prevent or resist apprehension or detention, which is required for Third Degree Assault under RCW 9A.36.031 (1)(a). Therefore, because

this element of Third Degree Assault is not a necessary element of Robbery. Third Degree Assault is not a lesser included offense of Robbery. STATE v. HERRERA, 95 Wn.App. 328 (Div 3) (4-29-1999).

Mr. Courtney walked into a Safeway and took two bottles of liquor, and walked out of the store. there was no Force or Fear of Violence involved so there was no Robbery. Once Mr. Courtney was outside the store and loss prevention officer Nathaniel Duval identified himself and said stop, the Theft was over and the escape began, so any Assault that took place after Nathaniel Duval identified himself was with the intent of escaping not to obtain or retain anything. The only Assault that took place was after Mr. Duval pushed Mr. Courtney in the back as he was running away, he tripped and fell to the ground and lost the bottles of liquor and at no time did Mr. Courtney or Mr. Duval try to retrieve the bottles of liquor. As stated above Third Degree Assault is an Assault with the intent to prevent or resist the lawful apprehension or detention of the defendant, therefore there was no Robbery!

(2) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Defence Attorney Dave Shaw did not interview the loss prevention officers, the police officers, or any store employee. He could not put on any kind of meaningful defense as to what took place outside the store. Defense attorney Dave Shaw took the burden from the State to prove each and every element of the crime of second degree robbery when he stipulated to the theft, at closing in front of the jury. Attorney Dave Shaw knew the State was over the time limit of 90 days for trial and

Mr. Courtney questioned him many times about the continuances the State was using to hold him. He asked his attorney to file a motion for dismissal on the grounds of speedy trial violations but Mr. Shaw said he would not do so. So Mr. Courtney had one drawn up and Dave Shaw refused to file the motion with the Court stating in his words "the Court doesn't care about this."

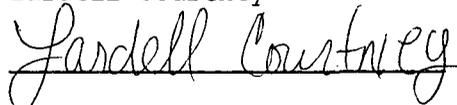
D. CONCLUSION

Courtney's conviction for Robbery in the Second Degree can not stand and should be dismissed with prejudice. The assault conviction should be sent back to the Trial Court for resentencing.

DATED this 16 day of July, 2013.

Respectfully submitted,

Lardell Courtney



DOC# 944037 UNIT: G-B-10

Stafford Creek Corrections Center

191 Constantine Way

Aberdeen, Washington 98520

1.

2.

STATE of WASHINGTON

CAUSE NO. 12-1-03395-3

3.

Plaintiff

4.

v.

Motion for Order of Dismissal

5.

Lardell Courtney

Based on Violation of CrR 3.3

6.

Defendant,

and CrR 3.3(b)(5) BUFFER

7.

8.

Comes Now: Lardell Courtney, Respectfully

9.

brings this motion for order of Dismissal on behalf

10.

of the above name Defendant, and moves the Court to

11.

dismiss the information in the above Caption Cause

12.

persuant to CrR 3.3 and CrR 3.3(b)(5) OR

13.

the grounds of speedy trial clauses of the State

14.

and Federal Constitution, that the Defendant has

15.

not been granted fair rights to speedy trial under

16.

the time limits from the Date of the defendants

17.

arraignment.

18.

19.

This motion is based on the files and

20.

records herin and the attached Memorandum

21.

of authorities in support of the Defendants motion

22.

to dismiss.

23.

24.

Date of January

Lardell Courtney

25.

2013

26.

Memorandum of Authorities in Support

CrR 3.3(d)(4) Speedy trial time limits under CrR 3.3(9)(6) impliedly incorporates a requirement the state act in good faith and exercise due diligence in attempting to obtain the defendant for trial in the Superior Court.

Due diligence Requirements, Superior Court Criminal Rule 3.3(d)(4) requires that, following remand from an appellate court, incarcerated defendants be brought to trial not later than 60 days after "Arraignment" for Defendants held in Custody or Defendants Counsel following the appellate mandate.

CrR 3.3(9) excludes certain periods from the 60 day limit in computing the time for arraignment and the time for trial. CrR 3.3(9)(6) specifically excludes the time during which a defendant is detained, in a Federal Jail or prison.

CrR 3.3(b)(5) Buffer. Trial must commence 60 days after arraignment. CrR 3.3(d)(4). However, if any period of time is excluded from the Speedy Trial period under CrR 3.3(e) the speedy trial period extends to at least 30 days after the end of the excluded period CrR 3.3(b)(5).

1. Facts In Support of Motion for Dismissal

2.

3. 1.) That the Defendant "Jardell Courtney" was
4. Arraigned "Sep-7-2012", with Jury Trial
5. Set and Scheduled for Tuesday Oct 30, 2012
6. (NOTE:) Defendant MR. Courtney has NOT
7. signed away his rights to a Fair and Speedy Trial.
8. Sep-7-2012 to Oct-30-2012 54 days.

9.

10. 2.) State: ask for Continuance, Thursday Oct-25-2012
11. Defendant refuses to sign the Continuance.

12.

13. 3.) Defendant is brought back to Court "Nov-15-2012"
14. STATUS Conference ORDER? Defendants ATTORNEY
15. Dave Shaw says he wants to interview witnesses?
16. Defendant Refuses to sign waiver of Speed Trial.
17. Trial Date Set for DEC-13-2012 31 Days

18.

19. 4.) Defendant is brought to Court DEC-13-2012
20. Defendants Attorney is Supposedly in Seperate Trial.
21. Defendant Refuses to Sign Continuance to waive
22. his right to a speedy Trial, but is Continued to
23. Jan-15-2013 which is 33 days Violation of
24. CrR 3.3 (b)(5) Buffer period.
25. CrR 3.3 (i) Dismissal with Prejudice. A criminal charge
26. not brought to trial within the time period provided by this Rule.

1.
2. 5.) Defendant is brought back to Court Jan 15-2012
3. The State is granted a 1 Day Continuance
4. Stating there are no available Court rooms
5. is Continued to Jan-16-2012
6. (NOTE:) T F T Days remaining "already violated
7. from Dec-13-2012 to Jan-15-2013 Contrary to
8. CrR 3.3 (b)(5). Defendants Refuses To Sign
9. Continuance. " The Court Start T F T Days at 29

10.
11. 6.) Defendant is brought to Court Jan-16-2013
12. Defence ATTORNEY: Dave Shaw Reports that
13. he is Sick Trial is Continued For 1 Day
14. Till Jan-17-2013 " Defendant is brought back
15. To Court Jan-17-2013 Defence ATTORNEY
16. Dave Shaw Reports that he is sick Trial
17. is Continued further Till Jan 22-2013.
18. Defendant Refuses to sign away his rights to
19. a fair speed Trial. Case Age 132 Days
20. As of Jan 22-2013 Defendant was further Continued
21. 2. UNDER the Sixth Amendment of the U.S. Constitution as
22. implemented by (18 U.S.C §§ 3161 et seq. and Fed. R. Crim. Proc. 50.)
23. A Defendant in a Criminal prosecution is entitled to a speedy Trial
24. AND UNDER CrR 3.3 and CrR 3.3 (b)(5).

25.

26.

DECLARATION OF SERVICE BY MAIL
GR 3.1

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DIVISION II

2013 JUL 18 AM 11:52

I, LARDELL COURTNEY, declare and say STATE OF WASHINGTON

That on the 16 day of JULY, 2013, I deposited the
following documents in the Stafford Creek Correction Center Legal Mail system, by First
Class Mail pre-paid postage, under cause No. 44487-9-II :

Statement of Additional Grounds RAP 10.10 ;

addressed to the following:

David B. Kock
1908 E. Madison St.
Seattle WA. 98122

Pierce County Prosecutor
930 Tacoma Ave. S. Room 334
Tacoma Washington 98402-2108

I declare under penalty of perjury under the laws of the State of Washington that
the foregoing is true and correct.

DATED THIS 16 day of July, 2013, in the City of
Aberdeen, County of Grays Harbor, State of Washington.

Lardell Courtney
Signature

LARDELL COURTNEY
Print Name

DOC 944037 UNIT G-B-10
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520