

Case # 31540-1

SUPPLEMENTAL

**Statement of Additional Grounds
For Review**

State of Washington

v.

Joseph Dean Byrd

COPY

JUL 09 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

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

STATE OF WASHINGTON)	No.315401
respondent)	
)	
vs.)	DEFENDANTS PRO SE SUPPLEMENTAL
)	STATEMENT OF ADDITIONAL GROUNDS
Joseph D. Byrd)	
petitioner)	

COMES NOW, the Defendant/Petitioner Joseph D. Byrd, in propria persona, and hereby submits this Supplemental Statement of Additional Grounds for review by this Court.

A. IDENTITY OF PETITIONER

Joseph D. Byrd, is the Petitioner in this matter, and asks this Court to accept and review this Supplemental Statement of Additional Grounds, on its merits. The Petitioner is pro se, and this Statement of Additional Grounds is pursuant to RAP 10.10(f)(c).

B. SUPERIOR COURT DECISION

On March of 2013, the Defendant/Petitioner Joseph D. Byrd, went to trial before a jury, and was found guilty, and was convicted of, Robbery in the Second degree, and Theft in the Third degree. The jury found the Defendant/Petitioner, not guilty of Assault in the Second degree. The Defendant was sentenced to 50 months for Robbery in the Second degree, and 365 days for Theft in the Third degree.

C. ISSUES FOR REVIEW

1. The Defendant/Petitioner, argues that he was prejudiced, for multiple convictions for incidents incurred during a single act of a crime committed, at the same place, and same time.

Was the Defendant/Petitioner prejudiced, for receiving multiple punishments for the same criminal conduct, committed during the same time, and place of the commissioned crime?

2. The Defendant/Petitioners counsel, failed to instruct the jury, for a lesser included to convict instruction to the jury.

Did the Defendant/Petitioners trial counsel, fail to instruct the jury fore a lesser included to convict instruction, and was the Defendant/Petitioner prejudiced by the counsel's failure to do so?

3. The prosecution fails to prove the element of intent, for the crime of Robbery in the Second degree, furthermore, the Defendant/Petitioner's counsel failed to address this issue, and instruct the jury to find the intent of the Robbery in the Second degree.

Was the Defendant/Petitioner, prejudiced by the prosecution's failure to present the element of intent to commit Robbery in the Second degree?

Was the Defendant/Petitioner, afforded effective assistance of counsel, when the Defense counsel, failed to present argument to this issue?

D. STATEMENT OF THE CASE

On January 18, 2013, the Defendant/Petitioner Joseph D. Byrd, entered the Walmart store, with the intention to purchase a cell phone. The Defendant/Petitioner, decides against paying for the cell phone(s), and embarks on shoplifting the items. during the commission of the shoplifting, the security camera employee, observes the Defendant/Petitioner Mr. Byrd, behaving in a SUSPICIOUS MANNER, AND CONTACTS THE FLOOR SECURITY, TO INVESTIGATE THE SUSPICIOUS INDIVIDUAL. The (plain clothed) security officer, locates the suspicious individual (Mr. Byrd), heading towards the store exit.

The (plain clothed) security officer, rushes the Defendant/Petitioner Mr. Byrd, in an attempt to apprehend him. The Defendant/Petitioner Mr. Byrd, dodges the (plain clothed) individual, in an attempt to flee the store. The plain clothed security employee, grabs the Defendant/Petitioner Mr. Byrd, and throws him to the ground. There is a struggle, the Defendant gets free, and runs out the store. The Police arrest the Defendant/Petitioner Mr. Byrd moments later. The Defendant Mr. Byrd, was booked into jail for Third degree Theft, Assault in the Second degree, and Robbery in the Second degree. The Defendant/Petitioner Mr. Byrd took his charges to trial, with a plea of not guilty. He was found guilty by the jury, for the crimes of, Third degree Theft, and Second degree Robbery, he was found not guilty by the jury for the crime of Assault in the Second degree.

The Defendant/Petitioner Mr. Byrd, received 365 days for Theft in the Third degree, and 50 months for Robbery in the Second degree.

E. ARGUMENT

Was the Defendant/Petitioner prejudiced, for receiving multiple convictions, and punishments, for incidents that incurred during a single act committed at the same place and the same time?

The Defendant/Petitioner argues, that he was prejudiced for receiving multiple punishments, for Theft in the Third degree, and Robbery in the Second degree. Both occurring from the same incident. The Defendant/Petitioner, also argues, that due to the multiple charges that the prosecution convicted him with, and these convictions were tried in a single proceeding, were a violation of his constitutional protection from excessive punishment. Brown v. Ohio, 432 U.S 161,165,97 S.Ct. 2221,53 L.Ed.2d 187(1977);State v. Turner, 169 Wn.2d 448,454,238 P.3d 461(2010);U.S Const. amend 5;Const. art I§9 It is only in the rare instance that flawed jury instruction permitting the jury to convict an accused person for multiple counts based on the same act do not violate double jeopardy.

Stae v. Much, 171 Wn.2d 646, 664, 254 P.3d 803 (2011) If it is not "manifestly apparent to the jury" that its verdicts for separate charges needed to be based on separate acts, then the "potentially redundant convictions" must be vacated. ID It violates jury unanimity when the Defendant is accused of several counts of the same offense, but the jurors were not expressly instructed that each conviction must rest on "separate and distinct act or events". State v. Nolte, 116 Wn.2d 831, 842-43, 809 P.2d 1990 (1991); State v. Borshiem, 140 Wn.App. 357, 365, 165 P.3d 417 (2007)

While the State may charge, and the jury may consider multiple charges arising from the same criminal conduct in a single proceeding, the Court may not enter multiple convictions for the same criminal conduct. State v. Freeman, 153 Wn.2d 765, 770, 108 P.3d 273 (2005)

When an accused person's conduct constitutes a single unit of prosecution, the prosecution may not divide that conduct into multiple charges for which it seeks separate punishment. State v. Adel, 136 Wn.2d 607, 610 40 P.3d 669 (2002)

In this argument, the DEFendant/Petitioner Mr. Byrd went to Walmart, committed the act of shoplifting, during this act he was rushed by a plain clothed individual, who grabbed him and threw him to the ground. There was a struggle the Defendant broke free, and ran out the store exit. All happening in the act of a single committed crime of shoplift. The Defendant was charged for multiple crimes for this singular act that was not premeditated, nor did he rehearse to do so.

The Defendant argues that due to the multiple charges that the prosecution charged him with, and tried him in a single proceeding, that he was convicted multiple times, for the same criminal conduct. Furthermore the prosecution divided the conduct into multiple charges, which is a violation of his constitutional right to be protected from excessive punishment.

2. Did the Defendants counsel, fail to instruct the jury for a lesser to convict instruction, and was the Defendant/Petitioner prejudiced by the Defense counsels failure to do so?

The Defendant/Petitioner, argues that it was ineffective assistance of counsel, to not instruct the jury for a lesser included to convict instruction. State v. Workman, Wash.2d 443, 447-48,584 P.2d(1978)

Under the "Workman Test", a party is entitled to a lesser included offense instruction where (1) each element of the lesser offense is a necessary element of the greater offense charged (the legal prong), and (2) the evidence in the case supports an inference that the Defendant committed only a lesser crime.

The rule authorizing juries to find the Defendants guilty of any lesser crime that the evidence supports, is a procedural safeguard, that reduces the risk of error, in the factfinding process, and that can also be beneficial to the Defendant, because it affords the jury a less drastic alternative than the choice between conviction of the offense, and acquittal.

In the Defendants argument, he states he was not afforded the effective assistance of counsel, when his Defense counsel failed to instruct the jury with a lesser included to convict instruction. U.S Const. Amend IV, Wash. Const. Art.I §22, The Federal and State Constitutions guarantee a criminal Defendant the right to effective assistance of counsel. Strickland v. Washington "To prove deficient performance", the Defendant must show that counsels performance fell below an objective standard of reasonableness. Strickland v. Washington, 466 U.S 668, 687, 104 S.Ct.2052, 80 Ed.2d 674(1984) A Defendant claiming ineffective assistance of counsel, must show that counsels performance and resulting prejudice.

Here the Defendant/Petitioner, argues that he was charged for a crime, that he did not premeditate. The Defendant/Petitioner argues that his Defense attorney, failed to instruct the jury on a lesser included offense, based on multiple charges

arising from the same criminal conduct. The Defendant/Petitioner was charged for Theft in the Third degree, for unlawfully taking two cell phones from a Walmart store, two cell phones that fell below the monetary value of a Second degree Theft. The Defendant/Petitioner was also convicted of Robbery in the Second degree, for the same act, the same merchandise, same time, same place. Because the Defense counsel failed to instruct the jury of the lesser included to convict instruction, the Defendant was left without the protection of effective assistance of counsel, and an affirmative defense. Therefore the Defendant/Petitioner was prejudiced, and his due process protection was violated.

3. The prosecution fails to prove the intent of the crime of Robbery in the Second degree, and Theft in the Third degree, nor did the Defense counsel provide any argument, or defense to this issue.

Did the prosecution error in failing to provide essential element of intent, to the jury? Was the Defendant prejudiced, by the prosecutions failure to prove intent by a reasonable doubt?

Was the Defendant afforded the right to effective assistance of counsel, when his public defender failed to present an argument towards this constitutional violation?

Francis v. Franklin 471 U.S (1985) A person will not presume to act with criminal intention, but the trier of fact, that is the jury, may find criminal intention upon consideration of the words, conduct, demeanor, motive and all other circumstances, connected with the act for which the accused is prosecuted. Coleman v. Butler 816 F.2d 1046,1048 (5th Cir. 1987) Due process prohibited presumption in jury charge that relieved State burden of persuasion on essential elements of charged offense.

The Defendant/Petitioner was convicted, without the Federal Constitutional protection, afforded to every criminal Defendant, against conviction, except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which the Defendant is charged. In the case of the Defendant/Petitioner Mr. Byrd, he was charged and convicted of two charges, stemming from the same criminal conduct. The essential element of intent, was never established to the jury by the prosecution, therefore leaving the Defendant/Petitiner, to the mercy of the prosecutions ability to pursue a non challenged inference of guilt, without proof of intent.

Defense counsel failed to challenge the prosecutions burden to prove the essential element of intent, leaving the Defendant/Petitioner vulnerable to the jury being persuaded by the prosecutions inference and speculations pertaining to her arguments.

Because of the Defendants counsel's failure to provide protection from such inference from the prosecution, it was a violation of the Defendant/Petitioners 6th amendment of the U.S constitution, to have compulsory process, and to have effective assistance of counsel.

CONCLUSION

Based on the aforementioned arguments and issues, the Defendant/Petitioner respectfully asks this Court to review the Defendants pro se issues presented as supplemental issues attached to the Defendant/Petitioners Statement of Additional Grounds, and to address these issues as this Court sees fit to remedy the issues presented.

Respectfully submitted,
THIS 8, DAY OF July 2014

Joseph BYRD
Joseph D. Byrd

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

STATE OF WASHINGTON
respondent

vs.

Joseph D. Byrd
Defendant

)
) No.315401
) (CLERKS ACTION REQUIRED)
)
) DECLARATION OF MAILING
)
)
)

FILED

JUL 09 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

I Joseph D. Byrd, declare that on July 8, 2014, I deposited the foregoing documents: DEFENDANTS PRO SE SUPPLEMENTAL STATEMENT OF ADDITIONAL GROUNDS, DECLARATION OF JOSEPH D. BYRD, DECLARATION OF MAILING, AFFIDAVIT OF SERVICE BY MAIL, or a copy thereof, in the internal LEGAL MAIL system of Coyote Ridge Correction Center, and made arrangements for postage addressed to the following:

Division 3 Court of Appeals
Division III
N. 500 CEDAR
Spokane WA. 99201

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

Dated this June 8, 2014 at the Coyote Ridge Correction Center,
1301 N. Ephrata Ave. Connell Washington 99326-0769.

Joseph Byrd

Joseph D. Byrd #862480
Coyote Ridge Correction Center
1301 N. Ephrata Ave
P.O Box 769
Connell Washington 99326-0769

FILED

JUL 09 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON

respondent

vs.

Joseph D. Byrd

defendant

)

) No.315401

) (CLERKS ACTION REQUIRED)

)

) DECLARATION OF JOSEPH D. BYRD

)

)

)

I Joseph D. Byrd, declare under the laws of the State of Washington, and by penalty of perjury by law, that the foregoing statements are true and correct to the best of my knowledge.

On July 8, 2014, I mailed to the Division 3 Court of Appeals, the following documents: DEFENDANTS PRO SE SUPPLEMENTAL STATEMENT OF ADDITIONAL GROUNDS, DECLARATION OF JOSEPH D. BYRD, DECLARATION OF MAILING, AFFIDAVIT OF SERVICE BY MAIL.

I filed these documents in accordance with the Washington Court Rules, and the rules of the Appellate procedures, to the best of my knowledge and abilities.

Dated this July 8, 2014, at the Coyote Ridge Correction Center, 1301 N. Ephrata Ave. P.O Box 769, Connell Washington 99326-0769

Joseph D. Byrd
Joseph D. Byrd
Coyote Ridge Correction Center
P.O Box 769
Connell Washington 99326-0769

FILED

JUL 09 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY

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

STATE OF WASHINGTON)
respondent) No.315401
) (CLERKS ACTION REQUIRED)
)
vs.) AFFIDAVIT OF SERVICE BY MAIL
)
Joseph D. Byrd)
Petitioner)

I Joseph D. Byrd hereby declare:

1. I am over the age of 18 and I am competent to testify herein,
2. On the below date, I caused to be placed in the U.S Mail, pre paid postage to the addressed below listed individuals,

Division 3 Court of Appeals
Division 3
N. 500 Cedar
Spokane WA. 99201

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correction Center 1301 N. Ephrata Ave, Post Office Box 769, Connell Washington 99326-0769, where I mailed said envelope in accordance with DOC and CRCC Policy 450.100 and 590.500. The said envelope contained a true copy of the below listed documents:

- A. 2 copies of Petitioners SUPPLEMENTAL STATEMENT OF ADDITIONAL GROUNDS.
- B. 2 copies of DECLARATION OF MAILING
- C. 2 copies of AFFIDAVIT OF SERVICE OF MAILING
- D. 2 copies of DECLARATION OF JOSEPH D. BYRD
- E. c copies of DEFENDANTS PRO SE SUPPLEMENTAL STATEMENT OF ADDITIONAL GROUNDS

3. I invoke the "Mail Box Rule", set forth in GR 3.1, the above listed documents are considered filed on the date that I

I Joseph D. Byrd swear under penalty of perjury by law, that the foregoing is true and correct to the best of my knowledge.

DATED THIS 8 DAY OF 2014

Joseph Dean Byrd

Joseph Dean Byrd #862480
Coyote Ridge Correction Center
1301 N. Ephrata Avenue P.O Box 769
Connell Washington 99326-0769