

To convict a defendant, the prosecution must prove beyond a reasonable doubt every fact necessary to constitute the crime charged. In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L. Ed. 2d 368 (1970).

Thus, every pertinent element contained in a statute must be included when setting forth the statutory definition of a crime for the jury. State v. Emmanuel, 42 Wn. 2d 799, 820, 259 P. 2d 845 (1953). See generally Oliver Wendell Holmes, The Path of the Law, 10 HARV. L. REV. 457, 459 (1897) (noting that even the bad man is entitled to be able to predict what conduct might be forbidden).

Likewise, jurisdiction in a criminal case must be proved beyond a reasonable doubt. State v. Norman, 145 Wn. 2d 578, 589, 40 P.3d 1161, cert. denied, 537 U.S. 817, 123 S.Ct. 87, 154 L. Ed. 2d 23 (2002). The "to convict" instruction must always include an element addressing the court's jurisdiction. Jurisdiction is the power of a court to hear and determine a case. State v. Lane, 112 Wn. 2d 464, 468, 771 P.2d 1150 (1989).

Herein, the "to convict" instruction on the Robbery In The First Degree stated in pertinent part that;

"To convict the defendant of a crime of robbery in the first degree, each of the following six elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 3rd of May 2009, the defendant unlawfully took personal property from the person or in the presence of another;
- (2) That the defendant intended to commit theft of the property;
- (3) That the taking was against the 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 person or property of another;
- (4) That force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking or to prevent knowledge of the taking ;
- (5) That in the commission of these acts or in immediate flight therefrom the defendant displayed what appeared to be a firearm or other deadly weapon; and
- (6) That any of these acts occurred in the state of Washington."

See exhibit 1, jury instruction # 15.

Unlike most crimes in the state of Washington, robbery in the first degree requires all of the above mentioned acts to have occurred in the state of Washington rather than one of these acts, or "any" as defined in the instruction.

The jury herein, from reading or listening to this instruction could have found that element (6),(5),(4),(3),(2), or (1) may not have occurred in the state of Washington, but because one of the elements did occur, defendant was guilty of robbery in the first degree. The error herein is a structural error, and is not subject to the "harmless error" doctrine.

For this reason, this court should find that the State was relieved of its burden and reverse the conviction herein.

ADDITIONAL GROUND No. 2

(2) DEFENDANT'S STATEMENTS CONCERNING PLEA
NEGOTIATIONS WERE ERRONEOUSLY ADMITTED
DURING TRIAL, UNDER ER 410 AND FAILURE
TO OBJECT CONSTITUTED INEFFECTIVE
ASSISTANCE OF COUNSEL

During the trial herein, defense counsel asked the following;

"Q: You also pled guilty to taking a motor vehicle?

A: Yes, I have.

Q: And you pled guilty because you were guilty?

A: Yes, I pled guilty because I did those crimes and I think
I should be punished on those crimes."

[10/08/09 - RP at 25].

In response, on cross-examination, the State was allowed the following question, without any objection from the defense,

"Q: And you were testifying on direct examination related to the fact that you had pled to those, but you received additional benefits and considerations for that plea; is that correct?

A: Yes, sir, probably."

[10/08/09 - RP at 126].

Defense counsel requested to redirect on the ER 410 question, as it put the defendant's credibility at issue in a "duress defense" case, and the trial court denied the request to further inquire.

[10/12/09 - RP at 15].

The purpose of ER 410, is to encourage criminal dispositions by protecting plea negotiations from disclosure. State v. Nelson, 108 Wn. App. 918, 925, 33 P.3d 419 (2001).

Herein, defense counsel requested a mistrial and noted to the trial court that he was ineffective for failing to object to the ER 410 being asked.

[10/12/09 - RP at 15].

Because the entire case hinged on the jury believing whether or not defendant was an active participant in the robbery, it was fatal for the court not to declare a mistrial, or strike the evidence concerning the plea communications. In the alternative, this court should find that counsel was deficient for failing to object to question concerning the ER 410 evidence. Further, that his failure to object, at the very least, leads to a probability that the jury made a credibility determination upon defendant's ability to only be honest when he is offered a plea.

For these reasons, this court should find that the admission of the ER 410 evidence was in error, and counsel was deficient. State v. Carter, 127 Wn. App. 713, 716-718, 112 P.3d 561 (2005);

citing State v. Thomas, 109 Wn. 2d 222, 225-226, 743 P2d 816 (1987);
Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.
Ed. 2d 674 (1984).

CONCLUSION

For these reasons, and the authorities cited herein, this
court should grant relief.

DATED this 6th day of AUGUST, 2010.



Jorawar Singh, Appellant

Jorawar Singh # 307364
MCC/WSRU
P.O. BOX 777
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1908 E. Madison St.
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To convict the defendant of the crime of robbery in the first degree, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 3rd of May, 2009, the defendant unlawfully took personal property from the person or in the presence of another;

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(3) That the taking was against the 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 person or property of another;

(4) That force or fear was used by the defendant to obtain or retain possession of the property or to prevent or overcome resistance to the taking or to prevent knowledge of the taking;

(5) That in the commission of these acts or in immediate flight therefrom the defendant displayed what appeared to be a firearm or other deadly weapon; and

(6) That any of these acts occurred in the State of Washington.

EXHIBIT # 1

If you find from the evidence that elements (1), (2), (3), (4), (5), and (6) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of elements (1), (2), (3), (4), (5), or (6), then it will be your duty to return a verdict of not guilty.

DECLARATION OF MAILING

IN ACCORDANCE WITH USC § 1746, I declare under the penalty of perjury of the laws of the State of Washington, that on this date, I mailed the following documents:

1. Copy of Additional Grounds for Review

2. Declaration of Mailing

Directed to : Daniel T. Satterberg, Prosecutor

King County Prosecutor's Office

King County Courthouse - 516 Third Av. W554

SEATTLE WA 98104

Signed : JK Singh Dated : 08 / 06 / 2010

Prepared by : Jorawar Singh # 307364 - B-3-04L

MCC/WSRU

P.O. BOX 777

MONROE WA 98272 - 0777

Acceptance of Service : The party listed above hereby accepts service of the documents mentioned herein.

Jorawar Singh # 307364 _ B-3-04L

Monroe Correctional Complex

Washington State Reformatory

P.O. BOX 777

MONROE WA 98272 - 0777

August 06, 2010 - - - - - COA Case # 64507-2-I

King County Prosecutor

Daniel T. Satterberg, prosecutor

516 Third Av. - W554

SEATTLE WA 98104

Dear Mr. Satterberg,

Please find enclosed a Statement of Additional Grounds for Review,
and a Declaration of Mailing documents.

Respectfully,


Jorawar Singh, Appellant

Jorawar Singh # 307364 - B-3-04L

Monroe Correctional Complex

Washington State Reformatory

P.O. BOX 777

MONROE WA 98272 - 0777

August 6th, 2010 - - - - - In re: case No. 64507-2-I

Richard D. Johnson, Clerk

Washington State Court of Appeals, Division I

One Union Square

600 University St.

SEATTLE WA 98101

Dear Clerk of the Court,

Please find enclosed Appellant's Statement of Additional Grounds for filing in the above case, pursuant to RAP 10.10. In addition please find enclosed the Declaration of Mailing form.

Also, I have enclosed two copies, would you please send me a copy?

Thank you,

Respectfully,



Jorawar Singh, Appellant

Attorney for Appellant:

Andrew P. Zinner

Nielson, Broman & Koch, P.L.L.C.

1908 E. Madison St.

SEATTLE WA 98122

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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
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Directed to : Washington State Court of Appeals, Division I

Richard D. Johnson, Clerk

One Union Square - 600 University St.

SEATTLE WA 98101

Signed : *JR Singh* Dated : 08 / 06 / 2010

Prepared by : Jorawar Singh # 307364 - B-3-04L

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