

64939-6

64939-6)

No. 64939-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

---

STATE OF WASHINGTON,

Respondent,

v.

ROMMEL LIDDELL,

Appellant.

---

2011 JUN 29 10:06:20  
COURT OF APPEALS  
DIVISION ONE

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

---

REPLY BRIEF OF APPELLANT

---

ELAINE L. WINTERS  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

**TABLE OF CONTENTS**

A. ARGUMENT IN REPLY ..... 1

THE STATE DID NOT PROVE BEYOND A REASONABLE  
DOUBT THAT MR. LIDDELL COMMITTED RESIDENTIAL  
BURGLARY ..... 1

B. CONCLUSION ..... 5

**TABLE OF AUTHORITIES**

**Washington Supreme Court Decisions**

State v. Davenport, 100 Wn.2d 757, 675 P.2d 1213 (1984)..... 4

State v. Mace, 97 Wn.2d 840, 650 P.2d 217 (1982).....3, 5

State v. Mevis, 53 Wn.2d 377, 333 P.2d 1095 (1959)..... 3

State v. Q.D., 102 Wn.2d 19, 685 P.2d 557 (1984).....3

**Washington Court of Appeals Decisions**

State v. Couch, 44 Wn.App. 26, 720 P.2d 1387 (1986)..... 1-2

**Washington Statute**

RCW 9A.52.025 ..... 1

A. ARGUMENT IN REPLY

THE STATE DID NOT PROVE BEYOND A  
REASONABLE DOUBT THAT MR. LIDDELL  
COMMITTED RESIDENTIAL BURGLARY

In appealing his conviction for residential burglary, Rommel Liddell argues the State did not prove beyond a reasonable doubt that he entered the apartment in question, an essential element of the crime where he was charged and convicted as a principal. Brief of Appellant at 8-14; RCW 9A.52.025; CP 1, 43. The State admits that it produced no direct evidence that Mr. Liddell entered or left the apartment on the day it was burglarized. Brief of Respondent at 8-9. The State's argument that it produced sufficient circumstantial evidence of entry must be rejected.

The State relies primarily upon State v. Couch, 44 Wn.App. 26, 720 P.2d 1387 (1986), to argue evidence that Mr. Liddell was seen near the burglarized apartment and later near the stolen property was sufficient to prove entry.<sup>1</sup> In Couch, owners of a colorful Pacific County tavern were alerted by a telephone call from

---

<sup>1</sup> The other two cases cited by the State discuss circumstantial evidence that entry was "unlawful." State v. J.P., 130 Wn.App. 887, 893, 125 P.3d 215 (2005) (respondent seen crawling into locked window of vacant building, admitted spray-painting wall); State v. McDaniels, 39 Wn.App. 236, 692 P.2d 894 (1984) (entry into open church unlawful where respondent conceded he was not there for worship or prayer and suggested he and his friends steal a coat).

a friend that someone was inside their closed business.<sup>2</sup> Couch, 44 Wn.App. at 27. The owners, Mr. and Mrs. McKay, went to investigate and saw the defendant's car parked across the road. Id. at 27-28. Upon entering the tavern, Mrs. McKay heard the sounds of someone moving inside and then heard the trap door to the basement close; Mr. McKay was outside and heard movement in the basement. Id. at 28. Mrs. McKay looked outside and saw the defendant climbing over a fence next to the tavern. Here husband then saw the defendant grappling in the road with the friend who telephoned them about the illegal entry. Id. at 28. Additionally Mr. McKay shot at the defendant's car as he drove away, and later found the car parked nearby with possible bullet holes in his fender. Id. This Court concluded the State had presented sufficient circumstantial evidence that the defendant had entered or remained unlawfully in the tavern. Id. at 29-32.

The State's reliance upon Couch is misplaced, as it demonstrates the absence of proof beyond a reasonable doubt in Mr. Liddell's case. Here, the only evidence of entry was a witness who testified she might have seen Mr. Liddell dropping off another person, Terrence Nicholson, who attended a gathering at an

---

<sup>2</sup> The tavern was near a creek, and water ran down the side of the bar and drained into the basement. Couch, 44 Wn.App. at 27.

apartment in the same complex as the burglarized apartment.  
12/16/09RP 100-01, 120. If anything, this is circumstantial  
evidence that Mr. Nicholson, not Mr. Liddell, entered the  
burglarized residence.

The other circumstantial evidence relied upon by the State is  
Mr. Liddell's presence outside the home where the items stolen  
from the apartment were located. Brief of Respondent at 12. In  
fact, the State concedes that Mr. Liddell "was never found in  
possession of stolen property." Brief of Respondent at 11.

Numerous Washington cases hold that possession of  
recently stolen property does not establish even a prima facie case  
of burglary. State v. Q.D., 102 Wn.2d 19, 28, 685 P.2d 557 (1984);  
State v. Mace, 97 Wn.2d 840, 843, 650 P.2d 217 (1982) (and cases  
cited therein); State v. Mevis, 53 Wn.2d 377, 380, 333 P.2d 1095  
(1959). The State attempts to distinguish these cases because  
they hold possession of stolen property is not sufficient to prove  
burglary and Mr. Liddell was only in proximity to recently stolen  
property. Brief of Respondent at 11. This Court must reject the  
State's faulty logic. Possession of recently stolen property is  
stronger evidence of guilt than being near the location where  
recently stolen property is found. Mr. Liddell was not in possession

of the stolen items, and his mere proximity to the same items hardly provides proof the he entered the apartment. Similarly, the State's argument that Mr. Liddell had been in the apartment by invitation a few times in the past does not support the conclusion that he entered without permission and committed the burglary. Brief of Respondent at 9.

The State also argues that Mr. Nicholson's nervousness at the party suggest Mr. Liddell and Mr. Nicholson committed the crime together. Brief of Respondent at 9-10. This, again, does not establish that Mr. Liddell entered the apartment. The State did not charge Mr. Liddell as an accomplice or with another person, and thus had the burden of showing Mr. Liddell, not Mr. Nicholson, entered the residence. CP 1, 34; State v. Davenport, 100 Wn.2d 757, 765, 675 P.2d 1213 (1984).

The Davenport Court found it was misconduct for the prosecutor to argue the State's failure to prove entry in a second degree burglary prosecution was irrelevant because the defendant could be convicted as an accomplice where the State had not proposed accomplice liability instructions. Davenport, 100 Wn.2d at 761-63. Here, too, the State cannot ethically claim that Mr. Liddell can be convicted as an accomplice to Nicholson's possible

entry. The State did not charge Mr. Liddell with committing the crime with another person or request that the jury be instructed on accomplice liability. Because the jury was not instructed on accomplice liability, this Court may not affirm Mr. Liddell's conviction on basis that he was an accomplice and another person entered the residence.

The State did not prove Mr. Liddell entered the burglarized apartment or stole the property it contained. Mr. Liddell's conviction must be reversed and dismissed. Q.D., 102 Wn.2d at 28; Mace, 97 Wn.2d at 845.

B. CONCLUSION

Rommel Liddell's conviction for residential burglary must be reversed and dismissed because the State did not prove every element of the crime beyond a reasonable doubt. In addition, for the reasons stated in the Brief of Appellant, Mr. Liddell's conviction for violation of a court order must be reversed and remanded for a new trial.

Respectfully submitted this 19<sup>th</sup> day of January 2011.



---

Elaine L. Winters – WSBA # 7780  
Washington Appellate Project  
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

---

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 64939-6-I
v.	)	
	)	
ROMMEL LIDDELL,	)	
	)	
Appellant.	)	

---

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 19<sup>TH</sup> DAY OF JANUARY, 2011, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] ROMMELL LIDDELL 20818 52 <sup>ND</sup> AVE W LYNNWOOD, WA 98036	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 19<sup>TH</sup> DAY OF JANUARY, 2011.

X \_\_\_\_\_ 

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710