

67307-6

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NO. 67307-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

PATRICK SHAQUILLE MAISONET,

Appellant.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CHRIS WASHINGTON

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Whether a rational trier of fact could have found sufficient evidence that the defendant committed first-degree robbery.

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The defendant, Patrick Shaquille Maisonet, and co-defendant, Jymaika D. Hutson, were charged with First-Degree Robbery. CP 1. At a bench trial, both defendants were found guilty as charged.¹ CP 20. Maisonet received a disposition of 103 to 129 weeks. CP 28-30.

2. SUBSTANTIVE FACTS

Phi Dinh is an 18-year-old Shoreline Community College student. RP² 53. During the weekends he lives at home with his parents in South Seattle. RP 60. During the weekdays he lives

¹ A review of the superior court file shows that Hutson has not filed a notice of appeal.

² The verbatim report of proceedings consists of three consecutively paginated volumes for the dates March 29, April 4, and May 11, 2011. They shall be cited as "RP" followed by the page number.

with his friend and fellow student, Tam, in the International District of Seattle. RP 59-60.

On the afternoon of January 29, 2011, Dinh was at home visiting his parents. RP 53-54. Around 5:00 p.m., Dinh took the bus to his girlfriend's house to pick up an essay assignment he had left there. RP 54, 56, 59. Shortly thereafter Dinh started walking towards Rainer Avenue South to catch a bus to Tam's house... RP 54, 56, 59. As he was walking northbound, two men approached him. RP 61, 63. One of the men pulled out a gun and pointed it at Dinh's face. RP 61. Dinh froze in fear as the other man robbed Dinh of his backpack. RP 64, 67. Among other things, inside the backpack was Dinh's homework, his text books, two bags of noodles and some cash that his mother had given him for living expenses. RP 84-86. As the two men fled, one of them made reference to a Seattle street gang. RP 67, 70.

The man who pointed the gun at Dinh was identified as Maisonet. RP 66, 82. The man who robbed Dinh of his backpack was identified as Hutson. RP 82-83.

C. **ARGUMENT**

VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE, THIS COURT MUST CONCLUDE THAT A REASONABLE FACT FINDER COULD HAVE FOUND THE DEFENDANT GUILTY OF FIRST-DEGREE ROBBERY.

Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the State, it permits a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

A reviewing court will draw all reasonable inferences from the evidence in favor of the State and interpret the evidence most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn from it. Salinas, 119 Wn.2d at 201.

Here, the State was required to prove that on or about January 29, 2011, Maisonet and Hutson unlawfully took personal property [a backpack] from the person of another [Phi Dinh]; that the defendants intended to commit theft of the property; that the taking was against the person's will by the defendants' use or threatened use of immediate force, violence, or fear of injury to that person; that in the commission of these acts or in the immediate

flight therefrom the defendants displayed what appeared to be a firearm; and that the acts occurred in the State of Washington. RCW 9A.56.200(1)(a)(ii); RCW 9A.56.190; CP 1.

This case presents a classic robbery scenario. There can be no doubt that with Phi Dinh's testimony alone, there was sufficient facts for any rational trier of fact to have found Maisonet and Hutson took Dinh's backpack with the intent to commit theft and that they obtained the backpack through force--the pointing of a firearm at Dinh's face. Maisonet does not contend otherwise. Instead, Maisonet insists that the State was required to prove even more.

Maisonet asserts that in a bench trial the State is required to prove beyond a reasonable doubt any surplusage in the charging document. In charging Maisonet, the information read in pertinent part that the taking of the backpack from Dinh was "against his will, by the use or threatened use of immediate force, violence and fear of injury to such person or his property **and to the person or property of another.**" CP 1 (emphasis added). Maisonet asserts that the State was required to prove this surplus language, and because there was no "person or property of another," even though he clearly committed first-degree robbery, his conviction must be

dismissed with prejudice. This position, however, is contrary to Supreme Court precedent.

At a minimum, the charging document must state all the essential statutory and nonstatutory elements of the crime charged. State v. McCarty, 140 Wn.2d 420, 424-25, 998 P.2d 296 (2000). "However, surplus language in a charging document may be disregarded." State v. Tvedt, 153 Wn.2d 705, 718-19, 107 P.3d 728 (2005). There is only one exception, "where unnecessary language is included in an information, the surplus language is not an element of the crime that must be proved unless it is repeated in the jury instructions." Tvedt, 153 Wn.2d at 718-19.

In Tvedt, the Court rejected Tvedt's argument that in his stipulated facts trial, the State was required to prove surplusage in the charging document--specifically the name of the victim of the charged robbery. Tvedt, at 718-19. In State v. Stritmatter, 102 Wn.2d 516, 688 P.2d 499 (1984), the Court rejected the same argument raised in his bench trial on the charge of buying or selling fish during a closed period. Stritmatter argued that there was no evidence supporting an allegation in the charging document that he purchased fish from a specific named person. The Supreme Court rejected Stritmatter's argument, holding that the trial court properly

treated the allegation as surplusage. Stritmatter, 102 Wn.2d at 523-24.³

Additional case law addresses the charging of a defendant in the conjunctive. In State v. McGary, 37 Wn. App. 856, 860, 683 P.2d 1125 (1984), the defendant argued that the State failed to prove he "took and drove away" in a motor vehicle as charged in the information alleging the crime of taking a motor vehicle without permission. Based on existing case law, the Court rejected McGary's argument.

Acts described in a penal statute in the alternative or disjunctive may be pleaded in the conjunctive. Proof that the crime was committed in any one of several nonrepugnant ways or means will support a conviction.... The State is only required to prove either a taking or riding even though the information uses the conjunctive.

McGary, 37 Wn. App. at 860 (citing State v. Ford, 33 Wn. App. 788, 789-90, 658 P.2d 36 (1983)).

In addition to the plethora of case law contrary to Maisonet's position, so to is his argument contrary to statute. RCW 10.37.056

³ See also the following cases rejecting the same argument: State v. Hawthorne, 48 Wn. App. 23, 25, 737 P.2d 717 (1987); State v. McGary, 37 Wn. App. 856, 859-60, 683 P.2d 1125, rev. denied, 102 Wn.2d 1024 (1984); State v. Hobbs, 71 Wn. App. 419, 423, 859 P.2d 73 (1993); State v. Rivas, 49 Wn. App. 677, 746 P.2d 312 (1987); State v. Vahey, 49 Wn. App. 767, 776 n.2, 746 P.2d 327 (1987), rev. denied, 110 Wn.2d 1013 (1988); State v. Serr, 35 Wn. App. 5, 8, 664 P.2d 1301, rev. denied, 100 Wn.2d 1024 (1983).

provides in pertinent part that "[n]o indictment or information is insufficient, nor can the trial, judgment or other proceedings thereon be affected, by reason of any of the following matters...[f]or any **surplusage** or repugnant allegation or for any repetition, when there is sufficient matter alleged to indicate clearly the offense and the person charged; nor...[f]or any other matter which was formerly deemed a defect or imperfection, but which does not tend to the prejudice of the substantial rights of the defendant upon the merits." RCW 10.37.056(4) and (5).

Citing neither the Supreme Court case law or statute cited above, Maisonet argues that his argument needs to be examined in light of State v. Hickman, 135 Wn.2d 97, 954 P.2d 900 (1998). Hickman, however, merely states what McCarty acknowledged 14 years prior to Hickman, and what Tvedt acknowledged 7 years after Hickman, that non-elements included in the "to convict" jury instruction become the law of the case that must be proven beyond a reasonable doubt. Hickman, 135 Wn.2d at 99. In short, Hickman is of no moment.

The Supreme Court has already rejected the arguments Maisonet makes here. Under the doctrine of *stare decisis*, a defendant must make a clear showing that an established rule is

"incorrect and harmful" before it is abandoned. In re Stranger Creek, 77 Wn.2d 649, 466 P.2d 508 (1970). Maisonet fails to meet that burden here.

D. CONCLUSION

For the reasons cited above, this Court should affirm Maisonet's conviction.

DATED this 4 day of January, 2012.

Respectfully submitted,

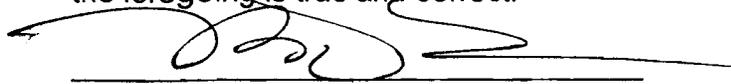
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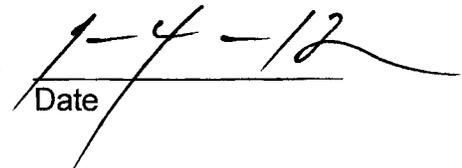
Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Susan Wilk, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. MAISONET, Cause No. 67307-6-1, in the Court of Appeals, Division I, for the State of Washington.

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



Name
Done in Seattle, Washington



Date