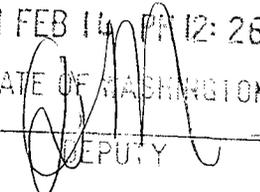


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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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No. 40892-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Mathew Meacham,

Appellant.

Grays Harbor County Superior Court Cause No. 08-1-00115-9

The Honorable Judge Gordon Godfrey

Appellant's Opening Brief

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ASSIGNMENTS OF ERROR

1. The court's sexual motivation findings infringed Mr. Meacham's Fourteenth Amendment right to due process because the evidence was insufficient to prove the elements of each aggravating factor.
2. The prosecution failed to produce evidence that Mr. Meacham engaged in identifiable conduct while committing each offense that proved beyond a reasonable doubt the offense was committed for the purpose of sexual gratification.
3. The trial court erred by adopting Conclusion of Law No. 5 (CP 11).
4. The trial court erred by adopting Finding of Fact No. 2.1 (sexual motivation finding, CP 14).
5. The trial court erred by adopting Finding of Fact No. 2.3 (CP 14).

ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

A finding of sexual motivation requires evidence of "identifiable conduct by the defendant while committing the offense which proves beyond a reasonable doubt the offense was committed for the purpose of sexual gratification." In this case, the prosecutor introduced evidence that Mr. Meacham entered a woman's garage on two occasions, stole her laundry—including socks, shirts, underwear, and bras—returned to disable security equipment, and stole a garbage bag of clothing. Did the court's sexual motivation findings violate Mr. Meacham's Fourteenth Amendment right to due process because the prosecution failed to prove the essential elements of each aggravating factor?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Mathew Meacham was caught taking his neighbor's clothing out of a clothes dryer in her garage. He had done so on one other occasion. CP 7-9. The state charged him with two counts of Residential Burglary, each with a special allegation that the crime was "for the purpose of sexual gratification". CP 5.

Mr. Meacham moved to dismiss the special allegations, and the trial court granted his motion. Order Granting Defendant's Motion to Dismiss Special Allegation, Supp. CP. The state filed an interlocutory appeal, and the Court of Appeals reinstated the special allegation. *State v. Meacham*, 154 Wash.App. 467, 470, 225 P.3d 472 (2010); Notice of Discretionary Review, Mandate, Supp. CP.¹

The case went to trial before a judge. Mr. Meacham stipulated that he entered the garage and stole the clothing. Agreed Order Re: Exhibits and Bill of Particulars, Statement/Bill of Particulars, Supp. CP. The contested issue was whether there was sufficient evidence to support the sexual motivation allegations. RP (6/2/10) 3-24.

¹ The Court did not reach the merits of the issue (the sufficiency of the evidence).
Id.

The evidence included testimony and documentary evidence that the victim was a 29 year old woman who lived two houses down from Mr. Meacham, that she was missing clothing, and that she ran in the neighborhood. Also introduced were Mr. Meacham's statements that he wanted "female" clothing, and that he had underwear from "past relationships". RP (6/2/10) 9; CP 7-10. Mr. Meacham argued that this was insufficient to support the special allegation. RP (6/2/10) 16-18.

The trial judge found that the evidence was sufficient for the special allegation. In his oral ruling, he noted that "The victim in this case is a very attractive 32 year old, young lady, five foot two and weighs 120 pounds," later again calling her "attractive".² RP (6/2/10) 21, 22. The parties entered Findings of Fact and Conclusions of Law, and Mr. Meacham was sentenced to a total of 70 months. CP 7-12, 14. He timely appealed. CP 25-44.

² Judge Godfrey repeatedly called the words "sexual gratification" vague, but declined to set aside his verdict on that basis. RP (6/2/10) 19-24; RP (6/7/10) 2-7.

ARGUMENT

THE SEXUAL MOTIVATION FINDINGS VIOLATED MR. MEACHAM'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS BECAUSE THE EVIDENCE WAS INSUFFICIENT TO PROVE THE ESSENTIAL ELEMENTS OF EACH AGGRAVATING FACTOR BEYOND A REASONABLE DOUBT.

A. Standard of Review

Constitutional questions are reviewed *de novo*. *State v. Schaler*, 169 Wash.2d 274, 282, 236 P.3d 858 (2010). Evidence is insufficient unless, when viewed in the light most favorable to the state, any rational trier of fact could find the essential elements beyond a reasonable doubt. *State v. Engel*, 166 Wash.2d 572, 576, 210 P.3d 1007 (2009).

B. The prosecution failed to introduce evidence of “identifiable conduct by [Mr. Meacham] while committing the offense which proves beyond a reasonable doubt the offense was committed for the purpose of sexual gratification.”

The Due Process Clause of the Fourteenth Amendment requires the state to prove every element of an aggravating factor beyond a reasonable doubt. U.S. Const. Amend. XIV; *State v. Stubbs*, ___ Wash.2d ___, 240 P.3d 143, 145 (2010); *see also* RCW 9.94A.835(2). The remedy for a finding based on insufficient evidence is reversal and dismissal with prejudice. *Smalis v. Pennsylvania*, 476 U.S. 140, 144, 106 S. Ct. 1745, 90 L. Ed. 2d 116 (1986).

An exceptional sentence based on a finding of sexual motivation may be imposed only after a finding “beyond a reasonable doubt that the accused committed the crime with a sexual motivation.” RCW 9.94A.835(2). The phrase ‘sexual motivation’ “means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.” RCW 9.94A.030(46).

The statute

“does not criminalize sexual motivation. Rather, the statute makes sexual motivation *manifested by the defendant’s conduct in the course of committing a felony* an aggravating factor in sentencing.”

State v. Halstien, 122 Wash.2d 109, 120, 857 P.2d 270 (1993) (emphasis in original) (quoting *State v. Halstien*, 65 Wash.App. 845, 853, 829 P.2d 1145 (1992)). Instead, it “requires evidence of identifiable conduct by the defendant *while committing the offense* which proves beyond a reasonable doubt the offense was committed for the purpose of sexual gratification.” *Id.*, at 121 (emphasis added).³

In this case, the “identifiable conduct” by Mr. Meacham “while committing the offense” included evidence that he entered a woman’s garage on more than one occasion, that he stole laundry from her clothes

³ Absent this interpretation, the statute would run afoul of the due process vagueness doctrine. *Id.*, at 120-121.

dryer—including socks, shirts, underwear, and bras—that he returned to disable security equipment, and that he later stole a garbage bag full of clothing. *See* CP 7-12.

The evidence of this conduct does not establish beyond a reasonable doubt that the offense was committed for the purpose of sexual gratification. *Id.*, at 121. This is so because the conduct is (at worst) ambiguous; Mr. Meacham did not engage in any conduct during commission of the offense that removed the ambiguity. CP 7-12. Nor did the trial judge enter any findings relating to conduct committed during the burglaries that proved either offense was committed for purpose of sexual gratification.⁴ CP 7-12.

The trial court recognized this when it dismissed the special allegation prior to the state's interlocutory appeal. At that time, Judge Edwards determined that "the only way a fact finder could find the defendant guilty [of sexual motivation] would be through speculation..." Order Granting Defendant's Motion to Dismiss Special Allegation, Supp. CP.⁵

⁴ Instead, the trial court relied on Mr. Meacham's subsequent actions and statements to understand his motivation for the burglaries. CP 7-12. By doing so, however, the court ran afoul of the rules set forth by the Supreme Court in *Halstien*, *supra*.

⁵ This order was subsequently vacated by the Court of Appeals on procedural grounds. *State v. Meacham*, 154 Wash.App. 467, 470, 225 P.3d 472 (2010). The Court did not reach the merits of the issue (the sufficiency of the evidence). *Id.*

The evidence of Mr. Meacham's conduct during commission of the offense was insufficient to prove beyond a reasonable doubt that the burglaries were committed with sexual motivation. Accordingly, the prosecution failed to prove sexual motivation. The court's sexual motivation findings must be stricken and the case remanded for sentencing within the standard range. *Smalis, supra.*

CONCLUSION

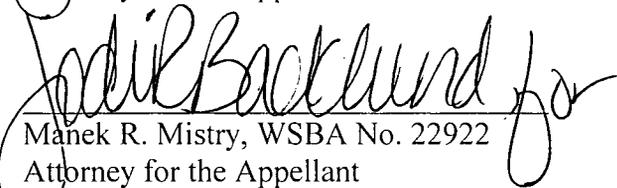
For the foregoing reasons, the sexual motivation findings must be vacated and the case remanded for sentencing within the standard range.

Respectfully submitted on February 10, 2011.

BACKLUND AND MISTRY



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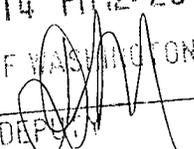


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CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Opening Brief to:

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And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on February ¹¹~~10~~, 2011.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on February ¹¹~~10~~, 2011.



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