

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)

Respondent,)

No. 45918-3-II

v.
Sonja E. Hutchens
(your name)

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

Appellant.)

I, Sonja Hutchens, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

See Attached response -

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DIVISION II
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BY [Signature]
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Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: 08/25/14

Signature: [Signature]

Court Of Appeals
Division II
Re: State v. Hutchens
Clark Cause No. 13-1-01009-7
Court of Appeals No. 45918-3

Statement of Additional Grounds for Review

Additional Grounds 1-

I believe the court erred by allowing the amendment of Burglary in the first degree on the first day of trial January 27, 2014 without sufficient proof or even an explanation of how or why they felt the vehicle could be considered a building or premise in this case.

Brief explanation of the facts on this case that are on the ~~rec~~ record:

On November 18th, 2013 the prosecutor offered me 20 months if I would forego trial and plea guilty to assault II, adding if I refused they would be adding the additional charge of Burglary in the first degree.

On November 27, 2013- the prosecutor filed a motion to amend the charges. The Honorable Judge Nichols offered that it seemed "suspicious" to allow a Ford Expedition to be considered a building in this case and advised he would need time to research the statute.

On January 27, 2014- The first day of trial the court^c without explanation allowed the amendment to add the charge of Burglary in the first degree.

My argument would be this is not a crime of Burglary in the first degree under the plain language of the statute.

per RCW 9A.04.110 (5) The first degree burglary statute criminal burglary when the accused assaults a person while in the building RCW 9A.52.020 - goes into exceptions stating:

Aside from its ordinary meaning, a building includes any dwelling, fenced area, vehicle, railway car, cargo container or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposits of goods.

I believe it is clear that the important elements of this instruction were deleted from the paragraph

Case law RE: Jury Instructions:

A to convict instruction that fails to set forth every element of the charged crime is reversible error.

In this case I believe the average juror would assume a vehicle is always a "building".

In addition after jury deliberations the jury sent out a question asking for the definition of "premise", Over defenses objection to offer any further instruction, the state prepared a hand written note stating " A premise means vehicle"

Definition Of "Premise" per RCW 9A.52.010 includes any building, dwelling, structure used for commercial aquaculture or any real property.

Case Law reference: In State v. Ransom 56. Wash.App.712,714,785 P 2d 469

Re: Supplemental Instructions-"should not go beyond matters that either had been or could have been argued to the jury"

In addition the appeals court held that instructing the jury on accomplice liability in response to question from jury after deliberations began was reversible error.

Additionally- In Massey v. State (1977) 141 GA app 557.234 SE 2 d 144- The courts in this case held that in order for a person to be guilty of Burglary of a vehicle it must be designed for use as a dwelling...The statute provided that a person commits Burglary when without authority and with intent to commit a felony enters or remains within the dwelling of a house or any other building, vehicle, railroad car or other structure design for use as the dwelling.

RCW 9a.04.110 (7) defines a "dwelling" as any building or structure which is used or ordinarily used by a person for lodging."

Definition of Lodging- 1: provide quarters for 2: come to rest as in a dwelling.

Definition of Dwelling- within meaning of the Burglary statute, portion of building or residence used for lodging.

What constitutes a "building" within restrictive covenant?

Leavitt v. Davis (1957) 153 ME 279, 136 A2D 535

Held that motor vehicles were held NOT to constitute a "building" within the terms.

State v. Hirschfelder 199 P 3d 1017, 148 Wn. App. 328(2009)

States that a "criminal statute that is susceptible to two or more reasonable interpretations is ambiguous, and useless legislative intent indicates otherwise, the rule of lenity requires that an appellate court interpret the statute in favor of the defendant.

Additional Grounds -2

As objected to at the time of trial on January 29, 2014, I believe the court erred by failing to give the full WPIC 2.05 instruction explaining when a vehicle could be considered a building. Defense took exception to allowing only the first sentence and disregarding the remaining paragraph RP.578-

Instruct on number 20. "Building" in addition to its ordinary meaning includes any vehicle.

Overruling defense objection to the full WPIC 2.05 which reads and describes per RCW 9A.04.110 (5)

A building to mean in addition to its ordinary meaning includes a dwelling, fenced area, vehicle, railroad car, cargo container or any other structure used for lodging of persons or carrying on businesses within.

Additional Grounds -3

Re: Prosecutorial Discretion
per RCW.9.94A.440

In this case I believe the state prosecutor abused their discretion in charging me at a higher degree in order to obtain a guilty plea, and only after I pursued my right to trial.

Rules regarding Prosecutorial Discretion and Number of counts state:

1) "Selection of Charges/Degree of Charges"

The prosecutor should file charges which adequately describe the nature of defendants conduct.

Other offenses may be charged only if they are necessary to ensure that charges:

A) Will significantly enhance the strength of the states case.

B) Will result in restitution to the victims

2) The prosecutor should not overcharge to obtain a guilty plea

Overcharging includes:

A) Charging a higher degree

b) Charging additional counts

Facts related to my case can be read on page 5-of transcripts
The prosecutor ~~states~~ on the record she chose Burglary in the first degree because Burglary in the second degree specifically negates vehicle in its statue, Not because Burglary in the first degree adequately describes the nature of defendants conduct.

Case law reference: State v. Lewis, 115 Wn. 2d 294, 797 P2d 1141
(1990)

I believe the court abused its discretion by allowing me to be overcharged even over objections that the alleged crime did not meet the statues criteria.

Additional Grounds- 4

Re: Ineffective Assistance of Counsel
(RP. 6,7)

On November 27, 2013 Omnibus hearing was held- Mr. James Sowder counsel for the defense admits he got into this case late and makes a motion for medical records-

On January 23, 2014- Readiness hearing he says he still had not received the requested medical records, he had still not had time to interview the defenses witnesses, or made contact with the radiologist that was supposed to be testifying.

He advised me we would be requesting a continuance so he could finish preparing for trial.

He then stood up in open court and claimed ready for trial.

I immediately submitted a letter to the Honorable Judge Nichols voicing my concerns, that I felt my constitutional right to adequate counsel were being violated, as well as my constitutional right to fair trial.

These issues were addressed on the record on January 27, 2014 in open court on Day 1 of my trial. RP.33-42) of transcripts My attorney Mr. Sowder admits to ignoring my emails and phone calls. RP.34) He also states " If I had been on the case origin we would have spent more like 120 days on it since she was out of custody."(RP. 36,37)

Defense counsel made it clear several times on the record that he felt he was going to need more time but failed to even attempt to submit a motion for continuance to adequately prepare. Especially considering the amendment of Burglary in the first degree on the first day of trial that he clearly was not prepared to argue considering his misinformation and negligent advice he gave me on the record as well as off.

On the record I believe its very clear a conflict that prejudiced my trial existed and absolutely affected the outcome.

The Sixth Amendment right to counsel includes the right to conflict free counsel and I believe that was at the least demonstrated on the record.

Additional Grounds -5

An amendment at trial may prejudice a defendant by leaving him or her without adequate time to prepare defense for new charge. A motion for a continuance was never requested by defense attny As a result I received incorrect and misguided legal representation that caused reversible error and absolutely effected the outcome of my trial.

Additional Grounds 6-

Defense submitted for sentencing a memorandum on offender score asserting that the correct offender score should be 0 based on ~~to~~ the felony convictions from Oregon in 2006 had either washed out or were not comparable to Washington off offenses. On February 18, 2014 during the sentencing hearing the state offered an explanation regarding the comparability of Oregons Theft 1 and Washingtons Theft 2..The courts did not offer an explanation as to why these charges would not have washed out. I had committed no crime from 2006 to 2013 which exceeded the 5 year wash out period requirement on class c felonies.

Additionally Re: Wash Out Period

STATE v. SMITH, 65 Wn. App. 887, 830 P. 2d 379 (1992)

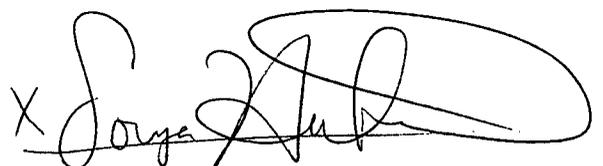
The courts held that under the clear language of the statute the wash out period is interrupted not for any reason, but only for time spent in confinement pursuant to a felony conviction.

Per RCW 9.94A.370 (2)

When the defendant challenges the validity of any of the prior convictions used to calculate his or her score, the trial court must hold an evidentiary hearing.

See also State v. Reinhart, 77 Wn. App. 454, 457, 891 P.2d 735

In closing I would like to thank the Court of Appeals for hearing my case and reviewing these issues brought before you.

X 

August 25, 2014

STATE OF WASHINGTON

Respondent,

No. 45918-3-II

v.

Sonja Elaine Hutchens

Appellant

RECEIVED
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STATE OF WASHINGTON

Statement of Additional Grounds for Review

Please accept my attached statement in regards to my opening brief that has been submitted by my attorney. Any additional questions or concerns can be addressed through Jodi R. Backlund (360) 339-4870, which will be addressed on my behalf.

This is being mailed to :

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Tacoma, WA 98402-4454

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DOC #333520