

Case # 31540-1

**Statement of Additional Grounds
For Review**

State of Washington

v.

Joseph Dean Byrd

COPY

FILED

OCT 21 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON)	CAUSE No. 31540-1-III
Respondent,)	
)	STATEMENT OF ADDITIONAL
Vs)	GROUND FOR APPEAL.
)	
JOSEPH DEAN BYRD)	
Appellant)	

I IDENTITY OF APPELLANT.

COMES Now, Mr Joseph Dean Byrd, Appellant in the above captioned action number and exercising the rights to present Additional Grounds which I believe those are important and my Counsel failure to present as identify and presented in part II of this brief.

II STATEMENT OF RELIEF SOUGHT.

APPELLANT, Mr Byrd, argues that; The judgment and sentence is constitutionally invalid, due to Double Jeopardy violation U.S.C.A. 5 Const. Art. 1, 2, 9, and 19 of the Washington State Constitution.

III STATEMENT OF FACTS.

On January 18th 2013, Mr Byrd enter to the Store Walmar, in 1005 North Stratford, Moses Lake, Grant County, WA. On about 4:00 P.M. Mr Byrd while inside the store grabeð "TWO"

1 cell phones with the value of 29.88 without tax. When Mr Byrd
2 intended to leave the store without paying for the cell phones
3 he was intercepted by the store security, Mr Shane Morlan, and
4 by gravng the defendant, and thrown to the floor. Mr Byrd hit
5 the ground, stood up, and took off running out the front doors.
6 See Shane Morlan on direct, CP at 72. Later, Mr Byrd was
7 arrested by Mr Brian L. Jones from the City of Moses Lake Poli-
8 ce Department, and Mr Byrd was in possession of TWO cell phones
9 with each value of 29.88 without tax. See CP at 101-111, Mr
10 Jones in direct examination.

11 The State opted to charge Mr Joseph Dean Byrd with
12 Robbery in the second degree, Assault in the second degree, and
13 Theft in the third degree. Allegedly occurred in January 18,
14 2013 at about 4:15 P.M. at Moses Lake Walmart. Pretrial CP at 4.
15 Later, the charge of Second degree assault was dismissed. See
16 CP at 11-12, Merger Doctrine in counts 1 and 2 (Motions in
17 lamine).

18 IV ARGUMENT.

19 Mr Joseph D. Byrd, Appellant, Argues that;
20 The crime of Robbery in the second degree RCW 9A.56.210 states;

- 21 1)-A person is guilty of robbery in the second
22 degree if he commits the robbery.
22 2)-Robbery is a class B felony.

23 The crime of theft in the third degree RCW 9A.56.050 states;

- 24 1)-A person is guilty of theft in the third degree
25 if he or she commits theft of property or service
26 which (a)-Does not exceed seven hundred fifty
fifty dollars in value, or (b)-Includes ten or
more merchandise pallets, or ten or more beverage
crates, or combination of ten or more merchandise--

1 pallets and beverage crates.

2 2)-Theft in the third degree is a gross misdemeanor.

3 "ANALYSIS OF ROBBERY, THEFT AND STEAL"

4 According to WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY,

5 ROBBERY; An act or instance of ILLEGALLY TAKING
6 another's property by the use of intimidation or violent force.

7 At this point that there is no threats or physical contact by
8 the defendant towards Mr Shane Morlan, Mr Morlan is six foot
9 and two inches and a least twice of size. See CP at 72, He stated
10 that He threw the defendant, the defendant hit the ground,
11 the defendant stood up, and took off running out the front door
12 to the eastward direction. Mr Morlan never shows fear of defend.

13 THEFT: The act or an instance of "stealing".

14 STEAL; To take (the property of another without
15 right or permission).

16 Now, if Robbery is the act or instance of illegally taking
17 another's property. And Theft is the act or an instance of
18 "STEALING", and stealing is; To take the property of another..

19 ROBBERY AND THEFT DO THEY SHARE THE SAME ELEMENT?

20 The act or instance of "taking illegally" and "Stealing"?

21 Mr Joseph Dean Byrd argues that the conviction of Second degree ^{and the sentence}
22 Robbery and Theft in the third degree violates the Double Jeopardy
23 Clause under the U.S.C.A. 5 Const. Art. 1, 2, 9 and 19.

24 See State V Clark, 170 Wn App 166, 283 P 3d 1116 (2012)

25 "(B)66" Where a defendant's act supports charges under TWO criminal
26 statutes, a court weighing a DOUBLE JEOPARDY challenge must

1 determine whether in light of the legislature intent, the cha-
2 rged crimes constitute the same offense. In re Pers. Restraint
3 of Orange,152 Wash. 2d 795, 815, 100 P 3d 291(2004).

4 In order to be the "same offense" for constitutional
5 double jeopardy analysis, the offenses must be the same in law
6 and in fact. Fletcher,113 Wash. 2d at 47, 776 P 2d 114 (1989).

7 Double Jeopardy protects a defendant from being con-
8 victed twice under the same statute for committing just one
9 unit of the crime. State V Adel,136 Wash.2d 629,634, 965 P 2d
10 1072(1978). If the legislature's intent is unclear, we construe
11 the ambiguity in the defendant's favor by applying the "RULE
12 OF LENITY" State V Graham,153 Wash. 2d 400, 405, 103 P 3d 1238
13 (2005). State v Bauer,295 P 3d 1227,(2013), Stated:

14 "RULE OF LENITY"

15 (21)-A statute is void for vagueness under the Due
16 Process if either (1)-It does not define the
17 criminal offense with sufficient definess that
18 ordinary people can understand what conduct is
19 proscribed, or (2)-It does not provide ascertain-
20 able standards of guilty to protect against
21 arbitrary enfocement. U.S.C.A. 6 Const. Amend. 14

19 City of Seattle V Winebrenner,167 Wn 2d 451,219 P 3d 686(2009)

20 State v Hirschfelder,242 P 3d 876, 170 Wn 2d 536 (2010)

21 State V Jacobs, 154 Wn 2d 596, 115 P 3d 281 (2005). State V --

22 Evans,164 Wn App 629, 265 P 3d 179 (2011) States;

23 (5)-The Due Process Vagueness Doctrine under the
24 Federal and State Constitutions serves Two
25 Important Purposes; 1)-It provides citizens
26 with fair warning of what conduct they must
avoid, and 2)-It protects them from arbitrary
or discriminatory law enforcement. U.S.C.A.6
Const. Amend.14 and RCW Const. Art. 1 & 3.

1 The Appellant, Mr Dean Byrd "ANTICIPATES" that;
2 The State it might argues that, the defendant assaulted Mr
3 Morlan, the store security. however, the State charged the
4 defendant with the crime of "Second Degree Assault"and instru-
5 cted the Jury for "THREE" different crimes. See CP in Jury in-
6 struction at 155 through 160, At sentencing in 3/25/13 Pgs 10
7 through 18, the Court, the State, and the defendant's Counsel
8 Ms Oglebay were weighing the "MERGER DOCTRINE" and "DOUBLE
9 JEOPARDY" in the convictions of Robbery in the second degree,
10 Assault in the second degree, and Theft in the third degree.
11 Ms Oglebay presented its theory as Theft is essential element
12 of Robbery and the conviction of boths implicates double jeop-
13 ardy. In fact, in the realm of robbery, there is not a serious
14 attempt to assault. And by "SERIOUS" mean that serious enough
15 to make it robbery one. The Court agrees to that in pages 17
16 and 18, that Robbery and Theft are in fact the same under the
17 "MERGER DOCTRINE" See State V Lindsay, 288 P 3d 641(2012):;

18 [80] 43-In conclusion, we hold that the second degree
19 kidnapping was incidental to the first degree
20 robbery and therefore, the kidnapping and robbery
21 convictions merge, Additionally the second
22 degree assault was committed with the intent to
23 commit the robbery and therefore, The assault
24 and robbery convictions merge. Remand the sentence

22 However, Mr Dean Byrd stil received TWO sentences. 57 Months
23 for robbery in the second degree plus 364 days in theft in the
24 third degree. See J&S.

25 V CONCLUSION.

26 For the reason set above the Appellant Mr Dean Byrd-

1 Convictions and sentence should be vacated and resentenced on
2 the lesser conviction of Theft in the third degree as applying
3 the "RULE OF LENITY".

4 CERTIFICATE OF MAILING

5 I, Joseph Dean Byrd, Hereby, Certifies under the
6 penalty of perjury and under the laws of the State of Washington
7 that I served by depositing in the mail box of this Institution
an envelope contained my "ADDITIONAL GROUNDS FOR APPEAL" and
sent to the following parties;

8 ONE
9 COURT OF APPEALS DIV. III
North 500 Cedar
Spokane, WA. 99201

TWO
GRANT COUNTY PROSEC. OFFICE
P.O. Box 37
Ephrata, WA. 98823

10
11 THREE

12 DEFENDANT/APPELLANT'S ATTORNEY
13 DAVID N. GASCH, Attorney at Law
P.O. BOX 30339
14 Spokane, WA. 99223-3005

15 I, declare that the above is true and correct to the best
of my knowledge.

16 Respectfully submitted on October 17, 2013 by;

17
18 Joseph Dean Byrd
Joseph Dean Byrd # 862480
19 Coyote Ridge Corr. Center
P.O. Box 769 (EA-47)
20 Connell, WA. 99326