

73624-8

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Nº. 73624-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON
Respondent,

v.

JASON SCHWIESOW,
Appellant.

REPLY BRIEF OF APPELLANT

Appeal from the Superior Court of King County,
Cause No. 14-1-02258-6
The Honorable Thomas J. Wynne, Presiding Judge

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I. REPLY

1. The State misrepresents the facts introduced at trial.

The State claims that Mr. Schwiesow's own testimony was that he "[g]rabbed the phone out of [Ms. Zumbroich's] hand."¹ The State ignores Ms. Zumbroich's own testimony and takes Mr. Schwiesow's testimony out of context.

Ms. Zumbroich testified that her phone fell out of her purse when her purse fell to the ground.² Ms. Zumbroich then testified that she tried to reach for her phone but Mr. Schwiesow saw her reach for it and grabbed the phone "as [she] was trying to get the phone."³ Ms. Zumbroich's testimony is clear that Mr. Schwiesow grabbed the phone "as she was trying to get to it." In other words, Ms. Zumbroich's own testimony was that Mr. Schwiesow grabbed the phone before she did.

Mr. Schwiesow did testify that he "grabbed the phone out of [Ms. Zumbroich's] hand,"⁴ but that statement must be read in the context of the question and answer that preceded that testimony. Mr. Schwiesow's testimony that he "grabbed the phone out of her hand" was given during a

¹ State's Response Brief, p. 8, citing RP 144.

² RP 49.

³ RP 49.

⁴ RP 144.

series of questions on cross-examination regarding the actions of Ms.

Zumbroich and Mr. Schwiesow during the struggle:

Q: What did Angel do after that?

A: Got up and **tried to grab her phone.** Got up and **tried to grab her phone.**

Q: All right. What did you do after that?

A: Grabbed the phone out of her hand.⁵

When Mr. Schwiesow's testimony that he "grabbed the phone out of her hand" is read in the context of his testimony that Ms. Zumbroich ***tried*** to grab her phone and in conjunction with Ms. Zumbroich's testimony that she "was trying to get" her phone, it is clear that Mr. Schwiesow grabbed the phone as Ms. Zumbroich was reaching for it but before she actually grasped it. The State misrepresents Mr. Schwiesow's testimony and takes it out of context and disregard Ms. Zumbroich's testimony.

2. *Nonog* is factually distinguishable from this case.

The State claims that the facts of *State v. Nonog*⁶ are "remarkably similar to the facts of this case."⁷ The facts of *Nonog* are similar to Mr. Schwiesow's case, but with one very important difference- *Nonog* was

⁵ RP 144 (emphasis added).

⁶145 Wn.App. 802, 187 P.3d 335 (2008), *affirmed* 169 Wn.2d 220, 237 P.3d 250 (2010).

⁷ State's Response Brief, p. 8-9.

convicted of interfering with domestic violence reporting after he grabbed a phone *from his ex-girlfriend's hands as she tried to dial 911.*⁸

The State claims that “[Mr. Schwiesow] in this case did the exact same thing to prevent the victim from calling 911 as the defendant in *Nonog* did.”⁹ The State is incorrect. Unlike this case, there was no doubt in *Nonog* that Nonog interfered with an actual attempt to report domestic violence- Nonog’s girlfriend had possession of a telephone and was in the process of dialing 911. Here, as discussed above, Ms. Zumbroich did not have possession of her telephone when Mr. Schwiesow grabbed it and threw it against the wall. Since the telephone was not being used to report domestic violence, Mr. Schwiesow’s actions do not constitute the crime of interfering with reporting of domestic violence in violation of RCW 9A.36.150.

II. CONCLUSION

The State’s argument in its Response Brief is based on a misrepresentation of the testimony introduced at trial and upon inapplicable case law. For the above stated reasons, this Court should vacate Mr. Schwiesow’s conviction and remand this case for dismissal with prejudice.

⁸ *Nonog*, 145 Wn.App. at 805, 187 P.3d 335.

⁹ State’s Response Brief, p. 9.

DATED this 9th day of March, 2016.

Respectfully submitted,

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1 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

2 DIVISION I

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4 STATE OF WASHINGTON)

5 Respondent,) NO. 73624-8-I

6) CERTIFICATE OF SERVICE

7 vs.)

8 JASON SCHWIESOW,)

9 Appellant.)

10 THIS IS TO CERTIFY that the Original of the **Defendant's**

11 **Reply Brief of Appellant**, has been provided to ABC Legal Messenger

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13 Appeals, Division I, at 600 University St., Seattle, WA 98101-1176.

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15 **Reply Brief of Appellant**, has been provided to ABC Legal Messenger

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17 SNOHOMISH County Prosecuting Attorney's, at 3000 Rockefeller, M/S

18 504, Everett, WA 98201, Further, a copy had been mailed to the

19 Defendant, Jason C. Schwiesow.

20

21 Dated March 9th, 2016

22 BY: _____

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