

February 2021
MPT-2 File

State v. Kilross

Smith & Smith LLP
Attorneys at Law
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MEMORANDUM

To: Examinee
From: Marie Smith
Date: February 23, 2021
Re: State v. Kilross

We represent Bryan Kilross in a criminal case. The State of Franklin has charged Kilross with armed robbery, a felony. The State alleges that Kilross robbed a liquor store using a handgun.

Kilross agrees that he was at the liquor store early in the evening of the robbery. However, he denies committing the robbery that occurred soon after he left and tells us that he was elsewhere at the time. He has only his own statement to confirm where he was when the robbery occurred. The prosecution's case rests on the testimony of a single witness, the liquor store clerk. We must, therefore, seriously consider having Kilross take the stand to testify in his own defense.

In making this decision, we will have to anticipate any impeachment evidence that the State might use against Kilross as a witness. Kilross has an eight-year-old felony conviction for robbery, for which he long ago completed his sentence. Before making a final decision on whether Kilross will testify, we will file a pretrial motion seeking to prevent the prosecution from using the prior robbery conviction for impeachment.

I want you to draft our brief in support of this pretrial motion. You should argue that the prosecution cannot satisfy the requirements of Franklin Rule of Evidence 609 concerning the use of prior convictions for impeachment. As you know, the Franklin Rules of Evidence are identical to the Federal Rules of Evidence. Do not address the admissibility of this evidence under any other evidentiary rule.

Follow the attached guidelines for writing persuasive briefs in trial courts. Draft only the "legal argument" section; others will draft the statement of facts.

Smith & Smith LLP

OFFICE MEMORANDUM

To: Associates
From: Marie Smith
Date: July 8, 2018
Re: Guidelines for Persuasive Briefs in Trial Courts

The following guidelines apply to briefs filed in support of motions in trial courts.

I. Captions

[omitted]

II. Statement of Facts

[omitted]

III. Legal Argument

Your legal argument should make your points clearly and succinctly, citing relevant authority for each legal proposition. Do not restate the facts as a whole at the beginning of your legal argument. Instead, integrate the facts into your legal argument in a way that makes the strongest case for our client.

Use headings to separate the sections of your argument. Your headings should not state abstract conclusions but should integrate the facts into legal propositions to make them more persuasive. An ineffective heading states only: “The court should not admit evidence of the victim’s character.” An effective heading states: “The court should refuse to admit evidence of the victim’s character for violence because the defendant has not raised a claim of self-defense.”

In the body of your argument, analyze applicable legal authority and persuasively argue how both the facts and the law support our client’s position. Supporting authority should be emphasized, but contrary authority should also be cited, addressed in the argument, and explained or distinguished.

Do not assume that we will have an opportunity to submit a reply brief. Anticipate the other party’s arguments and respond to them in the body of your argument. Structure your argument in such a way as to highlight your argument’s strengths and minimize its weaknesses.

Transcript of Interview with Bryan Kilross
November 20, 2020

Att’y Smith: Bryan, tell me what happened.

Kilross: I was going downtown to pick up a woman I had started dating, Janice Malone, to go out for dinner. We were going to have some drinks before going out. I decided to buy a bottle of wine. The Pack ’N Go was on the way, so I stopped there.

Smith: Had you been there before?

Kilross: Yes, the day before, for some beer. The guy behind the counter kept watching me and wasn’t very friendly. But that didn’t bother me at the time.

Smith: What time did you go to the Pack ’N Go on the next day?

Kilross: I was supposed to get to Janice’s place at 6:30, so probably a little after 6 p.m.

Smith: What happened when you went in?

Kilross: I went over to the wine section and spent some time deciding what to get. I got some red wine that I’d heard about and wanted to check out. The same guy was working behind the counter, giving me the same nasty look. He carded me, which was fine, and I paid and left.

Smith: Where did you go?

Kilross: I was heading to Janice’s apartment building when she called and said that she had to cancel. She said that she had heard some bad news from her parents, who needed her to come home right away. I guess they live about three hours away, in Columbia City, so she had to leave then. I told her to call me when she got back.

Smith: And then?

Kilross: I wasn’t sure what to do. I didn’t want to go out on my own, but I didn’t feel like going home. So I just drove around for a while.

Smith: Why didn’t you go straight home?

Kilross: I wanted to cool down. I had been looking forward to being with Janice and felt like she had just blown me off. It turns out she was telling the truth, but I didn’t know that then.

Smith: Where did you go?

Kilross: I don’t really remember. I know I drove through downtown, then out into the countryside for maybe an hour. Then I came home, around 8 p.m.

Smith: What happened when you got home?

Kilross: I was at my front door when two police officers came up behind me. They asked if they could come in and said they had some questions. I told them yes. They asked whether I had gone to the Pack 'N Go earlier and I said yes. One of them got a call and stepped outside. When she came back in, she arrested me for robbing the liquor store. They cuffed me, took me downstairs, and then drove me to the police station.

Smith: And then?

Kilross: They put me in a room. After a while, a detective came in, gave me the Miranda warnings, and started questioning me. He asked me why I had gone back to the store, where I had put the money, and where I had stashed the gun; he thought I had robbed the place. I kept telling him what had happened, but he didn't believe me. He kept talking about my old conviction. Eventually, I shut up and called your number. I was glad you answered.

Smith: After you called, what happened?

Kilross: Not much, until the lineup, which you saw.

Smith: Yes, the clerk from the Pack 'N Go identified you. We'll be getting copies of his statement soon. Let me ask you, were there any other people in the Pack 'N Go when you bought that wine?

Kilross: No.

Smith: Did you see anyone else when you left?

Kilross: No.

Smith: What were you wearing that night?

Kilross: Jeans, a jean jacket, a T-shirt. I think a wool knit hat: it was cold.

Smith: All right. Now, tell me about your old conviction.

Kilross: Eight years ago, I pled guilty to robbing a convenience store with a friend of mine. It was a stupid thing to do, but I didn't know any better. I confessed as soon as I was caught, and my lawyer got me six months in jail and a year on probation. My friend was arrested a few days later and he also pled guilty.

Smith: Can you tell me what you did?

Kilross: Not much to tell. I drove, and we parked in front of the convenience store, put on ski masks, and went inside. My friend pretended to have a gun in his jacket while I held

out a bag for the store clerk to put the money in. He gave us the money and we left. Apparently the parking lot video camera recorded my license plate, and the police found me later that night. Like I said, it was stupid to do it at all.

Smith: Since you got off probation, what has happened?

Kilross: I've stayed out of trouble. It was hard finding a job at first, but then I got work at a warehouse, loading and unloading trucks. I worked my way up to shift supervisor. I'll lose that job if I get convicted again.

Smith: Any other trouble with the law?

Kilross: Two speeding tickets. I pled guilty to both and paid the fines.

Smith: Okay. I see that you posted bail. . . .

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Smith & Smith LLP

FILE MEMORANDUM

From: Adrienne Burns, Investigator
Date: January 29, 2021
Re: State v. Kilross, Case No. 2020 CF 702: Summary of Evidence

This memorandum summarizes the evidence that the district attorney's office has disclosed to us and the information that I have acquired through my investigation.

Statement of Benjamin Grier: Grier is the store clerk who was on duty the night of the robbery at the Pack 'N Go. He stated that at about 6 p.m. that night, he saw a man who he recognized as Bryan Kilross enter the store. He recognized Kilross because Kilross had bought beer at the same store the previous day. He stated that Kilross went to the wine section and lingered for a few minutes before selecting a bottle. Grier asked Kilross for ID, which he gave. Kilross paid and then left.

According to Grier, about 15 minutes later, a man came into the store wearing the same clothes as Kilross: jeans and a buttoned jean jacket. The man had a stocking pulled over his head and held a gun. He asked Grier for the money in the cash register, which Grier gave him. Grier said he was pretty sure it was the same guy who had just bought the wine because he looked and sounded the same. Then the man left. Grier didn't see him drive away. Grier called the police and gave them Kilross's name, which he remembered from the ID.

Lineup: The police brought Grier in to view a lineup later that night. Grier identified Kilross as the robber with no hesitation.

Store Video: The police have two video feeds from the store, one from the interior and one from the parking lot. The interior video shows the back of a man matching Kilross's description bringing something to the counter at 6:12 p.m. This man has a hat on. The clerk appears to ask for ID, which the buyer offers. At no time is Kilross's face visible.

The interior video also shows another man approaching the counter at 6:24 p.m., with similar pants and jacket to the first, but with a stocking over his head and what appears to be a weapon. The events that follow match Grier's statement. At no time is this man's face visible.

The parking lot video does not show either Kilross or the other man driving into the lot, entering the store, or driving away.

Statement of Janice Malone: In my interview with her, Ms. Malone confirmed that she and Kilross were set to meet at her apartment at 6:30 p.m. At 5:45 that night, Ms. Malone received news from her parents and decided she had to leave to go visit them immediately. She stated that she called Kilross well before 6:30 to let him know. She did not remember the time of the call. She did not have further contact with him that night.

Prior Conviction: The police file contains a copy of the indictment and a transcript of the hearing on Kilross's guilty plea to the felony of robbery in 2013.

**STATE OF FRANKLIN
DISTRICT COURT OF MERCIA COUNTY**

State of Franklin,

Plaintiff,

v.

Case No. 2013 CF 427

Bryan Kilross,

Defendant.

INDICTMENT

The Grand Jury of Mercia County, State of Franklin, charges that on or about May 30, 2013, Bryan Kilross committed the felony of robbery under Franklin Criminal Code § 29. The Grand Jury more specifically states as follows:

1. That on or about that date, Bryan Kilross did take the property of the Quik Pantry convenience store located at 1507 Perimeter Drive, Franklin City, Franklin.

2. With the intent to commit theft, Bryan Kilross used force, or used intimidation, threat, or coercion, or placed employees of the Quik Pantry in fear of immediate serious bodily injury to themselves.

Wherefore, Bryan Kilross did act against the peace and dignity of the State of Franklin.

Dated: June 26, 2013

Glen Hodas

Glen Hodas
District Attorney
Mercia County
State of Franklin

A TRUE BILL;

Jean Schmidt

Jean Schmidt
Presiding Juror of Grand Jury
Mercia County

**Excerpt from Hearing on Plea Agreement of Bryan Kilross, Case No. 2013 CF 427
July 17, 2013**

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Court: Mr. Kilross, please describe what happened.

Kilross: Yes, sir. Dave and I drove to the Quik Pantry convenience store in my car. We parked in front of the store. Dave had a toy gun, which he put in his jacket pocket. We put on ski masks, because we thought that if we had the masks on, no one would recognize us and we wouldn't get caught. When we went into the store, Dave pointed the toy gun through his jacket pocket at the clerk and asked for all the money in the register. Dave said, "I have a gun." I held open a paper bag while the clerk put all the bills into it. When we had the money, we ran out of the store, got in the car, and drove away.

Court: Anything else, Mr. Kilross?

Kilross: No, sir. That's what happened.

Court: Do you have any other statement you want to make?

Kilross: Yes, sir. I am really sorry that I did this. I know that it was wrong and that I should not have done it. Also, I want the court to know that all the money was returned to the store.

Court: Is the state satisfied?

The State: Yes, your honor. . . .