State v. Williams

104 Wash.App. 516 (2001) | Cited 0 times | Court of Appeals of Washington | January 26, 2001

PART PUBLISHED OPINION

Garnett Lynn Williams appeals his convictions on three counts of first degree robbery. He argues that his rights to a speedy trial were violated because of five continuances, granted primarily because of the unavailability of the assigned deputy prosecutor. He also argues that the trial court erred in admitting evidence of his alleged reputation in the community as a thief, that this was not harmless error, and that the trial court erred when it did not allow him to rebut this with evidence of his lack of prior convictions. Williams also raises numerous other issues, including two sentencing errors which the State concedes. We hold that speedy trial rights were not violated, but that it was reversible error to admit reputation evidence. We reverse and remand for a new trial without the reputation evidence.

I. SPEEDY TRIAL ISSUES

A. Pretrial Procedures

Williams was charged with three counts of robbery in the first degree for three incidents in August, September, and October 1997. Defense counsel was appointed, but was removed and replaced on December 23, 1997.

Trial was scheduled for January 12, 1998, the 59th day after arraignment. On January 12, 1998, counsel for both parties requested a continuance. The deputy prosecutor was involved in an aggravated murder trial, and newly- appointed defense counsel needed more time to prepare for trial. Williams did not want to waive his right to a speedy trial and wanted to go to trial that day. The court wanted to grant 'a five-day-emergency continuance,'[1] but due to scheduling difficulties granted a continuance for only two days, to January 14, 1998. The prosecutor acknowledged that he would not be finished with his other trial by then and would need another continuance.

The written 'Order for Continuance of Trial Date' included findings that 'Prosecutor is currently in a murder trial and defense counsel had represented that he was going to request a continuance because he was recently appointed' and that 'a continuance is required in the due administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense.' Clerk's Papers at 29.

On January 14, 1998, the court granted a five-day continuance to January 21, 1998, to allow another

prosecutor to be assigned to the case.

Defense counsel stated that he was not ready for trial, but that Williams insisted on proceeding and requested dismissal due to denial of his right to a speedy trial. The written order found that 'Deputy Prosecuting Attorney is currently in trial on another case. The defense attorney has recently been appointed and needs additional time to prepare.' Clerk's Papers at 30. The trial court found that the continuance was 'required in the due administration of justice' and did not substantially prejudice Williams. Clerk's Papers at 30.

On January 21, 1998, the State argued that the assigned deputy prosecutor's murder trial was expected to last at least another two weeks and that no other deputy prosecutor from the appropriate unit was available to try the Williams case. The State requested a continuance until February 11, 1998. Williams continued to insist on going to trial, even though his counsel continued to state that he was not prepared for trial. The State asked the court to release Williams on personal recognizance to extend the speedy trial period, knowing that Williams would remain in custody on other charges. The court did not release Williams, orally announced that it would grant a five-day extension instead of a longer continuance, and signed a written order of continuance to January 28, 1998. Although the court orally stated that its reasons for granting the continuance were that the prosecutor was involved in another case that would last at least another two weeks and that defense counsel was not fully prepared, its written order referred only to the prosecutor's unavailability.

On January 28, 1998, the State again requested a five-day extension because the deputy prosecutor was still in trial. Defense counsel opposed the request and requested dismissal of the charges because Williams had been in custody for 73 days since arraignment. Defense counsel conceded he still had reservations about being prepared, but insisted there was no need to delay for further preparation. The court orally found that the deputy prosecutor was not available, that defense counsel was not yet prepared for trial, and that a delay would not prejudice Williams. The court granted a continuance to February 4, 1998, but warned that 'the State is very close to treading the limit on this.' Report of Proceedings (January 28, 1998) at 7. The written order made no reference to defense counsel, but provided that '{t}he deputy prosecuting attorney assigned to this case is currently involved in a murder trial in Department 6. It is not expected that that case will end before 2-6-98.' Clerk's Papers at 32. The printed language on the order provided for a continuance 'required in the due administration of justice,' but the trial court added the handwritten words 'pursuant to CrR 3.3(d)(8).' Clerk's Papers at 32.

On February 3, 1998, Williams moved to dismiss for want of speedy trial. On February 4, 1998, the State reported that there was still no deputy prosecutor available to try the case. Defense counsel stated that his lack of objection only applied to the continuances granted on January 12 and January 14, 1998. Williams requested that the charges be dismissed or that the trial commence that day as scheduled. The court denied the motion to dismiss and granted a continuance to February 9, 1998. The written court order provided: 'The Deputy Prosecuting Attorney assigned to this case is

currently involved in a murder trial in Department 6.' Clerk's Papers at 40. It also added that the continuance was 'pursuant to CrR 3.3(d)(8).' Clerk's Papers at 40.

At the pretrial hearing on February 9, 1998, the court denied Williams's renewed motion to dismiss. This was 27 days after the first continuance. A new deputy prosecutor was assigned and trial commenced on February 10.

B. Right to a speedy trial under CrR 3.3

''{A} trial court's grant or denial of a motion for a CrR 3.3 continuance or extension will not be disturbed absent a showing of a manifest abuse of discretion.'' State v. Cannon, 130 Wn.2d 313, 326, 922 P.2d 1293 (1996) (quoting State v. Silva, 72 Wn. App. 80, 83, 863 P.2d 597 (1993)). Discretion is abused only where it is exercised on untenable grounds or for untenable reasons. State v. Warren, 96 Wn. App. 306, 309, 979 P.2d 915, 989 P.2d 587 (1999).

A defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment. CrR 3.3(c)(1). The court may extend the time within which trial must be held for no more than five days (exclusive of Saturdays, Sundays, or holidays) if there are 'unavoidable or unforeseen circumstances beyond the control of the court or the parties.' CrR 3.3(d)(8).[2]

For an 'extension' under CrR 3.3(d)(8), if the nature of the unforeseen or unavoidable circumstance continues, the court may extend the time for trial in increments not to exceed five days,[3] unless the defendant will be substantially prejudiced in his or her defense. CrR 3.3(d)(8).

The court must state on the record or in writing the reasons for each extension. CrR 3.3(d)(8).

A court may also grant a 'continuance' under CrR 3.3(h)(2)[4] 'when required in the administration of justice.' As in the case of extensions, the defendant must not be 'substantially prejudiced' and 'the court must state on the record or in writing the reasons.' CrR 3.3(d)(8) and (h)(2).

Thus, the differing standards are 'unavoidable or unforeseen circumstances beyond the control of the court or the parties' for an extension under CrR 3.3(d)(8), compared to 'required in the administration of justice' for a continuance under CrR 3.3(h)(2). In addition, a motion for continuance under CrR 3.3(h)(2) must be filed 'on or before the date set for trial or the last day of any continuance or extension,' whereas an extension under CrR 3.3(d)(8) is allowed 'even if the time for trial has expired.' See State v. Raper, 47 Wn. App. 530, 534-37, 736 P.2d 680 (1987).

Extensions under CrR 3.3(d)(8) and continuances under (h)(2) impact the 60- or 90-day requirement of the speedy trial rule in different ways. CrR 3.3(d)(8) is one of several 'extensions of time limits' that apply 'notwithstanding the provisions of section (c) {such as the 60- and 90-day requirements}.' CrR 3.3(d) (emphasis added). On the other hand, CrR 3.3(g)(3) provides for treating '{d}elay granted by the

court pursuant to section (h)' as one of several 'Excluded Periods' that 'shall be excluded in computing the time for arraignment and the time for trial.' CrR 3.3(g).

'{U}navailability of counsel may constitute unforeseen or unavoidable circumstances to warrant a trial extension under CrR 3.3(d)(8).' State v. Carson, 128 Wn.2d 805, 814, 912 P.2d 1016 (1996). Courts have affirmed five-day extensions under CrR 3.3(d)(8) in a variety of situations involving scheduling conflicts. See, e.g., Cannon, 130 Wn.2d 313 (two extensions where deputy prosecutor occupied in another trial); State v. Watkins, 71 Wn. App. 164, 175, 857 P.2d 300 (1993) (three extensions, once due to scheduling conflicts for standby counsel to pro se defendant, once due to illness, and once due to unavailability of deputy prosecutor); State v. Kelley, 64 Wn. App. 755, 828 P.2d 1106 (1992) (three extensions, resulting in a delay of 17 calendar days, where the originally assigned deputy prosecutor had Christmas vacation plans and the next most available deputy was already in trial on another case); Raper, 47 Wn. App. 530 (retroactive extension, where prosecutor was in another trial, after clerical error in which court and parties were unaware speedy trial deadline had passed); State v. Stock, 44 Wn. App. 467, 472-73, 722 P.2d 1330 (1986) (prosecutor unexpectedly unavailable after 2-3 day trial went much longer); State v. Brown, 40 Wn. App. 91, 94-95, 697 P.2d 583 (1985) (scheduling conflict for deputy prosecutor); State v. Eaves, 39 Wn. App. 16, 691 P.2d 245 (1984) (co-defendant's counsel scheduled for another trial); State v. Palmer, 38 Wn. App. 160, 684 P.2d 787 (1984) (two five-day extensions, first because deputy prosecutor in another trial, second because deputy prosecutor's trial not completed and defense counsel started another trial).

It is not a manifest abuse of discretion for a court to grant a continuance under CrR 3.3(h)(2) to allow defense counsel more time to prepare for trial, even over defendant's objection, to ensure effective representation and a fair trial. State v. Campbell, 103 Wn.2d 1, 15, 691 P.2d 929 (1984).

For each continuance here, the court made a record as to the reasons for the continuance and found that Williams would not be prejudiced by the delay.

The first two of the five continuances were granted due to the unavailability of the prosecutor and to allow defense counsel more time to prepare. The third and fourth continuances were orally based on both factors, but the written orders reflect only the unavailability of the prosecutor. The fifth continuance was granted due solely to the unavailability of the prosecutor. Under Campbell, granting the continuances under CrR 3.3(h)(2) to allow defense counsel to prepare for trial was not an abuse of discretion. 103 Wn.2d 1 at 14-15. Granting continuances due to the prosecutor's unavailability was also not an abuse of discretion. Cannon, 130 Wn.2d at 326.

The record is unclear in the first three continuances whether they were based on CrR 3.3(d)(8) or (h)(2). The oral discussion reflects five-day extensions under CrR 3.3(d)(8), but the written orders are on forms labeled 'continuance' and have boxes checked based on the CrR 3.3(h)(2) standard that a continuance is 'required in the due administration of justice.'

Report of Proceedings (January 12, 1998) at 5-6, Report of Proceedings (January 14, 1998) at 10, Report of Proceedings (January 21, 1998) at 8-9, Clerk's Papers at 29-31. On the last two continuances, the same form for a continuance is used with the same boxes checked, but on both the words 'pursuant to CrR 3.3(d)(8)' are added. Clerk's Papers at 32, 40.

We hold that the proper standard under the circumstances here should be CrR 3.3(h)(2) rather than CrR 3.3(d)(8). The deputy prosecutor assigned to this case clearly knew that he would be occupied with an aggravated murder trial and would be unavailable to try this case for an extended time. The newly-appointed defense counsel was unprepared for trial at the time of the first four hearings. These circumstances do not properly fall within the category of 'unavoidable or unforeseen circumstances beyond the control of the court or the parties' for purposes of CrR 3.3(d)(8). However, the continuances were still justified because they were 'required in the administration of justice' under CrR 3.3(h)(2).

'{W}e do not reach the question of whether the court abused its discretion in granting the 5-day extension because we find that the decision of the trial court may be sustained on another basis. '{I}f the judgment of a trial court can be sustained on any grounds, whether those stated by the trial court or not, it is our duty to do so.'' State v. Armstead, 40 Wn. App. 448, 449-50, 698 P.2d 1102 (1985) (quoting State v. Ellis, 21 Wn. App. 123, 124, 584 P.2d 428 (1978)) (alterations in original).

Because there was no abuse of discretion in granting the continuances, even though they should have been granted under CrR 3.3(h)(2) rather than under CrR 3.3(d)(8), Williams's speedy trial rights under CrR 3.3 were not violated.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

II. FACTS ON OTHER ISSUES

A. Robberies

Count I: On August 8, 1997, 18-year-old Javonne Cage was working at her family's beauty salon on East 72nd Street in Tacoma, accompanied by her baby and her friend, 16-year-old Elbony Yancey. Yancey had dated Williams for a few months, but they had broken up shortly before the robbery and there were some bad feelings between them.

Just before the robbery, Cage and Yancey were talking outside the beauty salon and Yancey saw Williams walk around the corner. They went back inside with another girl. Once inside, Cage noticed a man walk toward the beauty salon, put a bandana over his mouth, pull out a knife, and enter the beauty salon. The robber put a 9-inch long knife to Cage's side and told her to give him the money or

he would kill her and her baby.

Yancey testified that she kept her head lowered during the robbery and did not see the robber's face or the knife, although she saw that he was wearing black and blue Nike shoes. She testified that she kept her head down because she did not want to know if it was Williams. Yancey claimed she did not recognize the robber as her ex-boyfriend during the robbery and did not recognize his voice. The robber was in the store about two minutes, then ran out. Cage testified that after the robber left, Yancey laughed and said, 'I thought that was your friend.' Report of Proceedings (February 10, 1998) at 20.

Yancey saw Williams wearing black and blue Nike shoes a few days after the robbery. At trial, she testified that before she saw Williams's shoes, she had no reason to think that he had committed the robbery. She also testified, without objection, that she asked Williams afterwards whether he robbed the store, he admitted the robbery, and they fought over whether she should tell anyone. She testified that she did not tell the police about this because she was afraid of Williams. Williams denied that he ever told Yancey that he committed the robbery.

Weeks after the robbery, Cage saw the robber walking on East 72nd Street. She got a good look at him from about five feet away. She told her parents she had seen him but did not call the police. She later picked Williams from a police photo montage.

Count II: On September 9, 1997, Juanita Hairston was using a pay phone outside a gas station when a man walked up to her and said, '{E}xcuse me, ma'am, but I need your purse.' Report of Proceedings (February 10, 1998) at 123. He pulled out a kitchen knife and took her purse, which contained her checkbook and other items. She got a good, unobstructed look at the robber's face, but did not notice the width or the length of the knife. Hairston later picked Williams from a police photo montage and identified him in court as the robber. When the police executed a search warrant at Williams's apartment on East 72nd Street in Tacoma and arrested Williams, they found duplicate checks from Hairston's stolen checkbook in his living room. Williams said he did not know how the checks got there. Three other people also lived at the apartment.

Count III: On October 7, 1997, Sandra Moore was putting her grandson in her car in a parking lot at a thrift store when a man came up to her, held a knife against her stomach, and said 'I'm sorry, ma'am, but this is a robbery.' Report of Proceedings (February 10, 1998) at 79. Moore estimated the knife was about four and one-fourth inches long. She had a clear view and looked right into the robber's face. He grabbed her purse and ran toward East 72nd Street and an apartment complex. Less than one month later, she identified Williams in a police photo montage.

All three robberies occurred within a few blocks of Williams's residence.

B. Trial

During trial, defense counsel questioned Yancey as follows:

Q Did you tell Ms. Cage immediately after the robber left that when he came in you thought that he was her friend?

A The other girl did, I assume, yes, I guess.

Q And until you saw Mr. Williams wearing similar shoes, you had no reason to believe that he was the robber; is that correct?

A No, because he had the shoes before the robbery.

Q When the robber left the store . . . at that time you did not believe that it was Mr. Williams, correct? You did not believe it?

A I didn't know he had, but I wasn't sure. I don't know. Report of Proceedings (February 10, 1998) at 46.

Later, the prosecutor asked Yancey, in the presence of the jury, why she thought Williams had robbed the store, and she replied, '{b}ecause when I first met him, my friend, he told me --.' Defense counsel's hearsay objection cut off the rest of her answer. Report of Proceedings (February 10, 1998) at 49. The court sustained the objection, and the prosecutor continued his questioning:

Q Did you have any reason to believe, based on any prior statement that the defendant had made to you, that he was the robber?

A No.

Q Were you aware of the defendant's reputation in the community through other people? Report of Proceedings (February 10, 1998) at 49.

Defense counsel objected to the last question. With the jury still present, the prosecutor argued that defense counsel had opened the door by asking why Yancey thought Williams was the robber. He argued that reputation testimony should be allowed under ER 803(a)(21) because 'character and reputation among society or a community . . . is {sic} the basis of why she thought the defendant was in fact involved in the robbery.

. . . I think it's appropriate and fair that the jury has a right to hear exactly why she thought the defendant was the robber.' Report of Proceedings (February 10, 1998) at 50. The court overruled defense counsel's objection and allowed the prosecutor to continue his questioning.

Q Are you aware from other members of the community as to the reputation of the defendant within the community?

A Yes.

Q Did the defendant have a reputation in the community?

A Um-hmm.

Q What was that reputation?

A I guess he was. Report of Proceedings (February 10, 1998) at 51 (emphasis added).

The jury heard nothing further regarding Williams's reputation.

Outside the presence of the jury, defense counsel characterized Yancey's testimony by saying '{The prosecutor} asked why she confronted and asked him if he did the crime, and . . . she said because he's known in the community to be a thief.'[5] Report of Proceedings (February 12, 1998) at 174. Similarly, the prosecutor argued (with the jury out) that Yancey had 'mentioned that her girlfriend had told her he was a thief,' and that this affected her state of mind and was relevant. Report of Proceedings (February 12, 1998) at 175.

The court later upheld the State's motion to exclude evidence of Williams's lack of criminal history, which he offered to rebut Yancey's testimony about his reputation. The court found that Williams's reputation in the community was relevant to Yancey's state of mind and was therefore admissible, but that his lack of a criminal record was not relevant to whether he committed the robberies and was therefore inadmissible.

Williams testified on his own behalf at trial. He denied committing all three robberies. He said he saw Yancey nearly every day while they were dating but he never spoke with her about the beauty salon. He testified that he did not know how Hairston's stolen checks got in his apartment.

Williams was sentenced to 144 months on each count to run concurrently, plus a deadly weapon enhancement of 24 months on each count to run consecutively, for a total of 216 months.

III. ANALYSIS

A. Reputation Evidence and Lack of Criminal History

This court reviews questions related to admissibility of evidence for abuse of discretion. See State v. Griswold, 98 Wn. App. 817, 827, 991 P.2d 657 (2000).

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Evidence of a person's character or a trait of character is not admissible to prove action in conformity therewith on a particular occasion, except that evidence of a pertinent trait of character may be offered by an accused or by the prosecution to rebut the same. ER 404 (a)(1).

The trial court allowed questioning of Yancey regarding Williams's reputation in the community, finding that it related to Yancey's state of mind as to why she believed Williams was the robber, rather than to Williams's character. The court found that her testimony was admissible because defense counsel had 'opened the door' by questioning her about not having a reason to believe Williams was the robber at the time of the robbery.

It is clear from the comments of the prosecutor and defense counsel at trial that they both inferred from Yancey's testimony that Williams had a reputation as a thief. Based on Yancey's testimony about Williams's reputation and the argument about that testimony, the jurors could also have inferred, as counsel did, that Williams had a reputation as a robber.

At oral argument before this court, the State conceded that the deputy prosecutor's line of questions about Williams's reputation was based on his mistaken understanding of Yancey's actual testimony. The State conceded that cross-examination did not open the door and that there was no foundation for reputation evidence, but argued that it was harmless error.

Because we agree that it was error to allow Yancey's testimony about Williams's reputation in the community, 'we must next determine whether the trial court's error was of sufficient magnitude to necessitate a new trial.' State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). If the evidentiary error does not result in prejudice to the defendant, it is not grounds for reversal. Bourgeois, 133 Wn.2d at 403.

The error here resulted from violation of an evidentiary rule, not a constitutional mandate. Therefore, we need not apply the more stringent test for 'harmless error beyond a reasonable doubt.' Bourgeois, 133 Wn.2d at 403. Instead, we apply the rule that 'error is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred.' State v. Tharp, 96 Wn.2d 591, 599, 637 P.2d 961 (1981).

The improper admission of evidence is harmless error if the evidence is of minor significance in light of the overall, overwhelming evidence. See Nghiem v. State, 73 Wn. App. 405, 413, 869 P.2d 1086 (1994). To determine whether the error was harmless, we must measure the admissible evidence of Williams's guilt against the prejudice caused, if any, by the inadmissible testimony. Bourgeois, 133 Wn.2d at 403.

The prejudice caused here was substantial. Like evidence of prior convictions, evidence that a defendant has a reputation as a thief sends the message to the jury that he has robbed before. 'It is difficult for the jury to erase the notion that a person who has once committed a crime is more likely

to do so again.' State v. King, 75 Wn. App. 899, 905, 878 P.2d 466 (1994) (quoting State v. Jones, 101 Wn.2d 113, 120, 677 P.2d 131 (1984), overruled on other grounds, State v. Brown, 113 Wn.2d 520, 782 P.2d 1013, 787 P.2d 906 (1989)). Yancey testified early in the trial, so the jurors already had this notion in their minds as they listened to the testimony of the remaining six witnesses.

The jury may have questioned Yancey's testimony that she did not recognize her ex-boyfriend Williams at the time of the robbery, but that she recognized him later by his shoes. Aside from Yancey's testimony, tainted by the improper discussion of Williams's reputation, the evidence in Counts I and III was essentially one person's word against another. The identification by victims is not necessarily overwhelming evidence of guilt. See State v. Hardy, 133 Wn.2d 701, 713, 946 P.2d 1175 (1997).

Even with the additional circumstantial evidence for Count II of the checks in the common area of the apartment that Williams shared, the evidence against him is not overwhelming enough to overcome the prejudicial effect of the reputation evidence. See Bourgeois, 133 Wn.2d at 403-04.

We find, therefore, that the admission of reputation evidence was not harmless error, and that a new trial is the appropriate remedy. See Hardy, 133 Wn.2d at 713.

Williams also argued that he should be allowed to introduce testimony that he had no criminal convictions to rebut Yancey's testimony about his reputation. The trial court found that his lack of conviction record was not relevant as to whether he committed these robberies and deemed it inadmissible.

Where the character trait of not being a law-abiding citizen is not an element of the crime charged, the defendant may not testify as to his law- abiding nature. State v. O'Neill, 58 Wn. App. 367, 369-370, 793 P.2d 977 (1990). The trial court's ruling was in accordance with O'Neill, and under most circumstances would not have been an abuse of discretion. Here, however, it compounded the problem of the improperly-admitted reputation evidence. The State put before the jury evidence of Williams's reputation as a thief or robber and he tried to rebut that evidence by showing he had never been convicted of a crime. Because Williams offered to testify about his lack of conviction record only to rebut Yancey's testimony about his reputation in the community, the court should have allowed it. Failure to do so was an abuse of discretion that compounded the improper admission of the reputation evidence.

B. Deadly Weapon Enhancements

The State concedes that there was insufficient evidence that the knife in Count II was a deadly weapon. It also concedes that the deadly weapon enhancements should have been sentenced concurrently with one another.

As a matter of law, a knife is a deadly weapon if its blade is longer than three inches. RCW 9.94A.125. A shorter knife may also be a deadly weapon if it has the capacity to inflict death and is likely to produce or may easily and readily produce death from the manner in which it is used. RCW 9.94A.125.

There is insufficient evidence in the record that the knife in Count II was a deadly weapon under either test of RCW 9.94A.125 cited above. The State concedes this point.

When a court imposes sentence enhancements under former RCW 9.94A.310(4) and orders the base sentences to run concurrently under RCW 9.94A.400, the sentence enhancements should run consecutive to the underlying sentence for the crime to which the enhancement applies but concurrently with each other. In re Charles, 135 Wn.2d 239, 253-54, 955 P.2d 798 (1998).[6]

The State concedes that Williams's weapon enhancements should have been sentenced concurrently with each other, but consecutively to the underlying sentences.

C. Sufficiency of the Evidence

In his pro se supplemental brief, Williams challenges the sufficiency of the evidence, particularly the testimony of the three victims who identified him.

When reviewing the sufficiency of evidence, this court views the evidence in the light most favorable to the State, finding it sufficient if it would permit any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Hendrickson, 129 Wn.2d 61, 81, 917 P.2d 563 (1996). 'A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.' State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Viewing the evidence most favorably to the State, there was substantial evidence from which a jury could have found Williams guilty of all three counts of first degree robbery. All the victims positively identified Williams as the robber, and stolen checks of one of the victims were found in his apartment. This evidence was sufficient to support the convictions even though it was not so overwhelming as to overcome the prejudice of the improperly-admitted reputation evidence.

D. Ineffective Assistance of Counsel

Williams contends that counsel's 'opening of the door' to reputation testimony, failure to be timely prepared for trial, and failure to fully litigate the speedy trial issue constituted ineffective assistance of counsel.

This court reviews a convicted defendant's claim of ineffective assistance of counsel under a two-part test:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction . . . resulted from a breakdown in the adversary process that renders the result unreliable. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

As discussed above, defense counsel did not 'open the door' for testimony about Williams's reputation. The trial court erred in allowing testimony despite defense counsel's objection.

While counsel's failure to be prepared for trial after being newly appointed to this case was a factor in four of the five continuances granted, the court specifically found that the delays would not substantially prejudice Williams. Moreover, the court cited unavailability of the deputy prosecutor as justification for all five continuances. Williams has not shown that he was prejudiced by the delays or by his counsel's alleged lack of preparation. Defense counsel vigorously objected to the last three continuances.

Based on these facts, counsel's performance was not deficient, and Williams does not meet either prong of the Strickland test.

E. Cumulative Error

Under the cumulative error doctrine, a defendant may be entitled to a new trial when errors cumulatively produced a trial that was fundamentally unfair. See In re Personal Restraint of Lord, 123 Wn.2d 296, 332, 868 P.2d 835 (1994). The defendant bears the burden of proving an accumulation of error of sufficient magnitude that retrial is necessary. See Lord, 123 Wn.2d at 332. Where no prejudicial error is shown to have occurred, cumulative error cannot be said to have deprived the defendant of a fair trial. State v. Stevens, 58 Wn. App. 478, 498, 794 P.2d 38 (1990).

Williams argues that five identified errors, plus 'several other 'unnamed errors,'' constitute sufficient grounds to reverse his convictions. Pro Se Supplemental Brief at 32. The alleged errors include the right to a speedy trial and admission of reputation evidence, discussed above. In addition, Williams raises for the first time on appeal whether the failure to perform expert voice analysis and failure to perform fingerprint analysis on the stolen checks were error. Because these issues were not raised in the trial court, we need not consider these issues. RAP 2.5(a). The fifth alleged error is the unspecified admission of otherwise inadmissible evidence. We need not review an assignment of error if a party fails to cite relevant authority that supports the party's argument on appeal. RAP 10.3(a)(5); City of Bremerton v. Sesko, 100 Wn. App. 158, 162, 995 P.2d 1257 (2000).

Williams has shown prejudicial error as to one of these five alleged cumulative errors (the admission of reputation evidence), so we need not reach the issue of whether cumulative error deprived him of a fair trial.

F. Other Errors

In his Pro Se Supplemental Brief, Williams raises numerous assignments of error that he attempts to preserve for the federal courts, but he fails to argue or to cite authority to support them. We need not consider arguments that are not developed in the briefs and for which a party has not cited authority. State v. Dennison, 115 Wn.2d 609, 629, 801 P.2d 193 (1990); RAP 10.3(a)(5) (appellate brief should contain argument supporting issues presented for review, citations to legal authority, and references to relevant parts of the record).

WANG, J.P.T.

We concur:

MORGAN, P.J.

BRIDGEWATER, J.

1. There is a great deal of confusion in the record about application of the provisions for extensions and continuances under the speedy trial rule, as discussed below. The discussion at the hearing of January 12, 1998, was based on a five-day extension pursuant to CrR 3.3(d)(8), whereas the written order appears to be based on standards for a continuance pursuant to CrR 3.3(h)(2). This pattern of oral discussion based on CrR 3.3(d)(8) and a written order based on CrR 3.3(h)(2) was repeated on January 14, 1998. On January 21, 1998, the State requested a longer continuance instead of a five-day extension. The court orally announced it would grant only a five-day extension, but the written order continued to reflect CrR 3.3(h)(2). On January 28, 1998, and on February 4, 1998, both the oral discussion and the written orders specify CrR 3.3(d)(8). At oral argument before this court, the State conceded that these should have been continuances under CrR 3.3(h)(2) rather than five-day extensions under CrR 3.3(d)(8).

2. CrR 3.3(d)(8) provides: When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the court or the parties, the court, even if the time for trial has expired, may extend the time within which trial must be held for no more than 5 days exclusive of Saturdays, Sundays, or holidays unless the defendant will be substantially prejudiced in his or her defense. The court must state on the record or in writing the reasons for the extension. If the nature of the unforeseen or unavoidable circumstance continues, the court may extend the time for trial in increments of not to exceed 5 days exclusive of Saturdays, Sundays, or holidays unless the defendant will be substantially prejudiced in his or her defense. The court must state on the record or in writing the reasons for the extension.

3. As a practical matter, increments are often for a full week, since Saturdays and Sundays are not counted. CrR 3.3(d)(8).

4. CrR 3.3(h)(2) provides: 'On motion of the State, the court or a party, the court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The court must state on the record or in writing the reasons for the continuance.'

5. As reproduced above, the transcript of Yancey's testimony is far more ambiguous and does not actually indicate that she said Williams had a reputation as a thief.

6. The legislature amended RCW 9.94A.310, effective June 1998, to require that enhancements run consecutively to each other. However, Williams was sentenced before the amendment was in effect.