

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,  
Respondent,

v.

JOHN CHARLES THOMPSON,  
Appellant.

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FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2014 APR 3 PM 1:15

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

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Appellant's Opening Brief  
Statement of Additional Grounds

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**Accomplice Liability Instruction**

1. Improper Washington Revised Code 9A.08.020  
Complicity Jury Instruction

2. It is reversible error to instruct the jury in a manner that would relieve the  
State of proving every essential element of a crime.

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**A. SUMMARY OF ARGUMENT**

Mr. Thompson raised the issue of an improper RCW 9A.08.020 Complicity Jury Instruction. Instruction #16 CP 39. The Superior Court denied relief for this issue.

**B. ASSIGNMENT OF ERROR**

Mr. Thompson should have been afforded a new trial for the erroneous instruction, #16 CP39, (to which counsel objected at trial) that he was an accomplice to any crime rather than The crime charged, premeditated murder.. The issue is ripe for review under RAP 2.5(c) and RAP 1.2(a)

**C. ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

For Accomplice Liability, RCW 9A.08.020 required appellant's knowledge that their conduct was facilitating the crimes for which they were charged. The State must prove every essential element of a crime beyond a reasonable doubt for conviction to be upheld. A conviction cannot stand if the jury was instructed in a manner that would relieve the State of this burden. Can this instructional error ever be deemed harmless?

**D. STATEMENT OF CASE**

John Thompson was arrested on January 23, 1997 and along with Aaron Faletofo was charged with the murder of Fiafa Griffith. Tija Stansberry and Peleiupa Leiataua were also arrested and subsequently took a plea for rendering criminal assistance.

Stansberry and Leiataua both testified they saw Faletofo with a gun in hand before and after the shots were fired. Faletofo, Thompson, and Leiataua wrapped and moved

Griffith's body to a truck, but when Thompson and Faletogo left in the truck, Leiataua and Stansberry stayed at the apartment and tried to clean up. During trial and in charging documents, the State alluded to a multitude of motives and ways the crime could have possibly happened. Thompson took the stand on his own behalf and always maintained that he did nothing wrong until after the fact of murder. At the end of trial, Thompsons counsel objected to the Accomplice Liability Instruction. Thompson and Faletogo were both found guilty of Premeditated murder. Thompson was also found guilty of Felon in Possession of a Firearm. Faletogo was sentenced within the range. Thompson filed a successful Personal Restraint Petition arguing his judgment and sentence was invalid. Before Thompsons judgment and sentence was made valid, he motioned to the court for a new trial based on an erroneous jury instruction. The motion was denied and Thompson filed notice of appeal. Mr. Thompson believes that under RAP 2.5 (c) and RAP 1.2(A) that this issue is ripe for review under the correct light in this court.

## **E. ARGUMENT**

### **1. ACCOMPLICE LIABILITY**

Thompson was charged as an accomplice to a first degree murder, alternatively felony or premeditated, with an underlying predicate of Robbery in the First. At no time did any evidence or testimony ever place Thompson as the principle. At the end of all testimony in trial and despite Thompson's counsel objecting the giving of Instruction number #16 CP39 The trial court instructed the jury as follows: "*A person is an accomplice in the*

*commission of a crime if, with knowledge that it will promote or facilitate the commission of a crime, he or she either (1) solicits, commands, encourages, or request another person to commit the crime; or (2) aids or agrees to aid another person in planning or committing a crime”.*

In the year 2000, the Washington Supreme Court noted in Roberts 14 P.3d 758, that the legislative history of RCW 9a.08.020 supports a conclusion that the legislature “intended the culpability of an accomplice not extend beyond the crimes of which the accomplice actually has knowledge” Roberts, 142 Wn. 2d 471, 510, 14P.3d 713, 735. Because the instruction relieved the State from meeting it’s burden of proving beyond a reasonable doubt that Thompson knew that he was facilitating the crime of murder in any scope that the State assumed, the error cannot be said to be benign, *See Jackson, 13*

*Wn. 2d at 723.*

**2. IT IS REVERSIBLE ERROR TO INSTRUCT THE JURY IN A MANNER THAT WOULD RELIEVE THE STATE OF PROVING EVERY ESSENTIAL ELEMENT OF A CRIME.**


The Supreme Court of Washington also noted that a conviction cannot stand if the jury was instructed in a manner that would relieve the State of this burden. State v. Jackson, 137 WN. 2d 712, 727, 976 P.2d 1229 (1999). Also noting that “the State must prove every essential element of a crime beyond a reasonable doubt for a conviction to be upheld. It is reversible error to instruct the jury in a manner that, would relieve the State of this burden, Quoting; State v. Byrd, 125 Wn. 2d 707, 713-14, 887 P.2d 396 (1995). In addressing any harmless error issue, the State must prove every essential element of a

crime beyond a reasonable doubt for a conviction to be upheld. So in order to establish that Thompson committed premeditated first degree murder, the State has to prove beyond a reasonable doubt that Thompson either (1) acted on his own or with an accomplice with intent to cause the death of Taifa Griffith and (2) that the intent to cause the death was premeditated. That burden was not met by the State. With all of the theories, possibilities and speculations, and witness testimonies that were thrown around during trial and closing arguments, there was never any evidence that Thompson did anything to fit either of those elements. Thompson maintained that he did nothing wrong until after the fact of murder; which is what all the evidence points to.

#### F. CONCLUSION

In conclusion, Thompson asks that this issue be held with the same respect as those that the Washington State Supreme Court, and this court have been holding. And in doing so, reverse the premeditated murder and remand for retrial

Respectfully submitted this 2nd day of January 2014

  
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage paid, a properly stamped and addressed envelope directed to the Court of Appeals Division I, One Union Square, 600 University Street, Seattle, WA 98101-4170 containing a copy of the Statement of Additional Grounds under No. 70254-8-I, In re Jon Charles Thompson.

I declare under penalty of perjury of the laws of Washington State that the foregoing is true and correct.

  
\_\_\_\_\_  
Jon C. Thompson  
Done in Shelton, WA

Executed this 2<sup>nd</sup> day of JANUARY, 2014