

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

NO. 89806-5

RON APPELATE, Plaintiff / Appellant,

v.

LUCKY BAIL BONDS, Inc., Defendant / Respondent,

AND

GREG D. PETERSON, Defendant / Respondent,

AND

CESAR LUNA, Defendant / Respondent,

AND

RILEY WIRTS, Defendant / Respondent,

AND

JOHN WIRTS, Defendant / Respondent,

AND

QUEST RECOVERY, Defendant / Respondent.

BRIEF OF APPELLANT

RON APPELATE

Robert D. Butler, WSBA #22475
Emily C. Beschen, WSBA #43813
Attorneys for Appellant

Law Offices of
ROBERT D. BUTLER
103 E. Holly St. #512
Bellingham, WA 98225
(360) 734-3448

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I. INTRODUCTION

The use of surety bonds as a pre-trial release mechanism is an important component of Washington's criminal justice system. It is one of the forms of pre-trial release that courts can use to ensure that Defendants will appear for court when they are required to do so. Under a surety bond the Defendant is "bailed out" of court custody. The bondee enters an agreement with the bail bond company that they will appear in court, in exchange for their release from the court's custody. Usually an indemnitor (often a friend or family member) enters into a contract with a bail bond company and financially pledges that the bondee will return to court, meeting the conditions of the bond. The indemnitor generally pays 10% of the bond amount, set by the court, to the bail bond company as a fee, and promises to pay the bail bond company the full amount of the bond in the event that the bondee fails to meet the bond requirements by missing a court date. For example, if a court sets a bond amount at \$1,000, then the indemnitor will pay the bail bond company a 10% premium of \$100, while promising the remaining \$900 in the event that the bondee misses a required court appearance.

Before a Defendant is released on bond, the bonding company writes a bond insuring the court that the Defendant will appear in court as required. If the bondee fails to appear, the prosecutor files an order forfeiting bond asking for a judgement to be filed against the bonding company. The judge issues a warrant for the arrest of the Defendant that allows law enforcement officers to place the Defendant under arrest. The bonding company is on the hook to surrender the bondee back to the custody of the court at some point over the next 12 months, or pay the bond amount to the court.

Some bonding companies hire bounty hunters (also known as bail recovery agents) to assist in locating, apprehending and surrendering a bondee, who has missed court, back into law enforcement custody. The licensing requirements of bounty hunters are regulated in Washington State by the Department of Licensing (DOL). The use of bounty hunters is ancient. Since bounty hunters are not state actors, they do not need to follow the same Constitutional requirements, such as reading Defendants their Miranda rights, or obeying the 4th amendment's search and seizure requirements, and they do not have the same privileges and immunities afforded to state actors acting in their official capacity.

Bounty hunters are required to follow the same laws, and subject to the same liabilities for injuries and damages as other citizens while they perform their efforts in apprehending a fugitive. This case is about a group of bounty hunters who were the subjects of a civil lawsuit for trespass, assault and battery that they committed at the home of a bondee's father, Ron Applegate. These bounty hunters need to be held accountable for their action and the damage and injuries that they caused.

II. ASSIGNMENTS OF ERROR

Issue: May a group of bounty hunters forcibly enter a private third party dwelling, without consent, in order to search for a bondee who has missed court?

Assignment of Error 1: Trial Court Instruction #39 misstates the law in Washington by instructing jurors that a bounty hunter is permitted to enter the private property of a third party in order to apprehend a fugitive / bondee who has missed a court appearance.

Assignment of Error 2: Trial Court Instruction #41 misstates the law by instructing that a bounty hunter may use force to enter a private dwelling, where the dwelling at issue is not the home of the fugitive / bondee whom they seek to apprehend.

Assignment of Error 3: Trial Court Instruction #17 misstates the law in Washington by instructing that, in a claim for trespass, it is the burden of the Plaintiff to disprove that the Defendant was privileged to be on their land, and it is the burden of the Plaintiff to disprove that the Defendant had a reasonable belief that they had a privilege to be on the land.

III. STATEMENT OF THE CASE

A. Factual Background

1. Dorothy signs an Indemnity Agreement to bail out her daughter, Elizabeth, with Lucky Bail Bonds

In 2011, Elizabeth Applegate is arrested for shoplifting and misdemeanor assault. CP 19. Lucky Bail Bonds, Inc. (Hereinafter “Lucky”) posts a bail bond to allow Elizabeth’s release while the misdemeanor case is pending. Ex 7. Before Lucky posts that bond, Elizabeth Applegate’s mother, Dorothy Applegate, fills out an “Indemnitor Application” and signs a “Bail Bond Indemnity Agreement” with Lucky. Ex. 9, 8.

In the Indemnity Agreement, Dorothy Applegate is a “co-signor” promising that in the event Elizabeth misses court, Dorothy will owe Lucky the full amount of the bond, \$4,000, plus any expenses associated with returning Elizabeth to jail. Ex. 8. The

Indemnity Agreement contains no terms that state Lucky has the right to enter Dorothy Applegate's property. Ex. 8. The Indemnity Agreement does not list an address for Dorothy Applegate's home. Ex. 8. Elizabeth never signs the Indemnity Agreement. Ex. 8.

The indemnitor application lists an address for Elizabeth and an address for Dorothy. Ex. 9. This application shows that Elizabeth does not reside with her parents. Ex. 9. Nowhere in the application does it discuss Dorothy giving up her rights to the quiet enjoyment of her property. Ex. 9.

2. When Elizabeth misses court, Lucky hires bounty hunters to locate and surrender her back to the custody of the court

On September 23, 2011 Elizabeth misses a court date. Ex. 7. In response to Elizabeth's missed court date, Lucky's Bail Bonds Agent, Greg Peterson, contracts with three bounty hunters for services to locate, apprehend, and surrender Elizabeth back into the custody of law enforcement. Ex. 7. The three bounty hunters hired to perform this service were Cesar Luna, John Wirts, and Greg Peterson. Ex. 7. Each bounty hunter signs a "Bail Bond Recovery Contract" on October 11, 2011. This recovery contract lists Elizabeth's last known address as 1213 Bradley Road in Lynden Washington. Ex. 7.

3. Bounty hunters attempt to locate Elizabeth by calling and posting a photo on Facebook

Bounty hunters attempt to locate Elizabeth by calling her mother Dorothy Applegate. CP 229. Dorothy Applegate informs the bounty hunter she does not know where Elizabeth is. CP 229.

On October 11, 2011 someone posts Elizabeth's photo on Facebook, through a page titled "Bail Recovery Agent of Washington Luna," asking those with any information to call. The following exchange takes place October 17, 2011:

Danielle Redmon: *That is the C-U-N-T that slashed keyed and egged my truck in hs! Ha I'd love to be there when she's caught!*

Bail Recovery Agent of Washington Luna: *We already caught this guy, are you talking about the girl?*

Danielle Redmon: *Yes elizabeth*

Bail Recovery Agent of Washington Luna: *Ahhhh yea we will find her!*

Danielle Redmon: *You should call me when you do. I haven't got to enjoy the sound of my fist hitting someones skill lately :)*

Bail Recovery Agent of Washington Luna: *Lmao, how is someone so pretty and little have sooooo much anger? To funny, but i can hit you up if it goes down but you must keep your hands to yourself lol but you can talk all the shit you want*

Danielle Redmon: *What about spitting? That's technically keeping my hands to myself :)*

Bail Recovery Agent of Washington Luna: *Lol*

(sic). Ex. 14. That same day, Cesar Luna claims to have received a tip that Elizabeth Applegate was staying at her parents' property, but he will not disclose his source. CP 229.

4. Bounty hunters go to Ron & Dorothy's home to search for Elizabeth

Late into the night of October 17, 2011, the three bounty hunters, along with one bounty hunter's adult son Riley Wirts, meet at the intersection of Loomis and Sunrise to conduct surveillance at the home of Elizabeth's parents. CP 234-235. Elizabeth's father and mother, Ron and Dorothy Applegate's home is located at 2477 Loomis Trail Road. Ex. 9. Also residing at that address is Ron's mother Patricia (as well as two young grandchildren Ron and Dorothy were in the process of adopting and taking from Elizabeth). Ex. 9. Elizabeth does not reside at this residence. Ex. 7, 9.

Luna dresses in jeans, a sweatshirt and bulletproof vest that has the words agent printed on it, along with a visible gun on his hip. CP 237-238. Luna and Peterson entered the property to check out trailers located behind the house, as Wirts approaches the front door of Ron and Dorothy Applegate's home. CP 20, 234-235.

5. Force is used to enter Ron Applegate's private dwelling

Ron Applegate comes outside onto the small front porch of his home as the bounty hunters walk to the rear of his house. CP 235. Ron yells at the men asking what they are doing. CP 235. Ron demands they leave his property. CP 20. One bounty hunter says they have a warrant. Ex. 15, 48, CP 243. Wirts continues to approach towards the front door of the home and, as Ron yells for him to get off the property, Ron puts up his foot and kicks him. CP 20, RP 102. Wirts charges at Ron, and Luna assists taking Ron to the ground. CP2 36. During this altercation a hole is made in the wall of Ron's home and the doorbell is broken off from his home. RP 27. Ron tries to retreat inside his house, so Wirts and Luna place Ron into a headlock, gaining control of him inside of his home. CP 236, 240. Riley Wirts watches his father John Wirts and Luna enter the home. CP 159-160. Luna recalls that Ron Applegate was trying to run inside of his house, and the bounty hunters gained control of him inside of the residence. CP 240. Luna pinned him against the door while bent down on one knee. CP 240. The men then identify themselves as bounty hunters explaining they were there to take Elizabeth. CP 245. Elizabeth (who was visiting her children) comes out and complies with the bounty hunters requests.

CP 236, 245. The next day Luna posts on Facebook about last night saying it was near an “all out BRAWL, just how we like it.” Ex. 13.

The bounty hunters believe that, because Dorothy Applegate co-signs on an indemnitor agreement to bail her adult daughter out of jail, they have every right to enter onto the property and into her home. CP 234 (Cesar Luna states: “...the address of Dorothy who is the cosigner on the bond, and that address gives us every right and that contract gives us every right to search that home.”); See also Ex. 15 (Greg Peterson states: “We don’t need a warrant to come into that house.” “The mom is a cosigner and this is her home.”).

B. Causes of Action Filed Against Bounty Hunters

Ron Applegate brought causes of action against each of the bounty hunters, Lucky Bail Bonds, and Riley Wirts for battery, false imprisonment, assault, trespass, as well as other torts stemming from the October 17, 2011 incident and Mr. Applegate’s home. CP 4-9. At trial, Plaintiff’s counsel introduced medical records of Ron Applegate and testimony from Ron Applegate’s doctor regarding the broken ribs that he sustained. CP 131. Defendants asserted that they were privileged to enter Mr. Applegate’s property, and

privileged to use force by virtue of their bounty hunter status. CP 87, 11, 113.

C. Court's Jury Instructions

1. Trial court jury instruction #17 (trespass)

With regards to the trespass claim, the court instructed the jury that Plaintiff must prove that Defendant did not have a privilege to be on the property, and instructed that the Plaintiff must prove the Defendant knew he did not have a privilege to be on Plaintiff's property:

Plaintiff claims that Defendants . . . each trespassed on his property. To establish this claim . . . Plaintiff must prove the following:

[. . .]

3) [. . .] Defendant did not have a privilege to be on Plaintiffs property; and

4) Defendant intentionally and unreasonably committed an act, or acts, while knowing or having reason to know, that he did not have Plaintiff's permission or a privilege to be on Plaintiffs property.

[. . .]

CP 87. The defense objected to this instruction as an inaccurate statement of the law in Washington. CP 65-67.

2. Trial court jury instruction #39 (privilege to trespass)

Instruction #39 provided the bounty hunters with a privilege to enter private land if the bounty hunter has any reasonable belief that a fugitive bondee is on the land:

The following privilege carries with it the privilege to enter land in possession of another for the purpose of exercising the particular privilege, if the person sought is on the land or the actor reasonably believes him to be there: the privilege to take into custody a person for whose appearance in court security has been given by the actor.

CP 111. The defense objected to this instruction as an inaccurate statement of the law in Washington. CP 65-67.

3. Trial court jury instruction #41 (privilege to use force to enter home)

Instruction #41 provided the bounty hunters with a privilege to use force to get inside of a private residence if he reasonably believed the fugitive bondee to be inside:

The privilege to enter land carry with it the privilege to use force to enter a dwelling if the person sought to be taken into custody is in the dwelling. Such force may be used only after explanation and demand for admittance, unless the actor reasonably believes such demand to be impractical or useless. Although the person sought is not in the dwelling, the actor is privileged to use force if he reasonably believes him to be there, and enters in the exercise of a privilege to take into custody a person for whose appearance in court security has been given by the actor.

CP 113. The defense objected to this instruction as an inaccurate statement of the law in Washington. CP 65-67.

IV. ARGUMENT

A. Standard of Review

Legal errors in jury instructions are reviewed de novo. *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 860, 281 P. 3d 289 (2012). An erroneous instruction is reversible error only if it is prejudicial to a party. *Id.* Sufficient jury instructions allow the parties to argue their theories of the case, are not misleading, and, when read as a whole, properly inform the jury of the applicable law. *Keller v. City of Spokane*, 146 Wn.2d 237, 249, 44 P.3d 845 (2002). If the instruction contains a clear misstatement of law, prejudice is presumed and is grounds for reversal unless it can be shown that the error was harmless. *Id.* at 249-50; *Ezell v. Hutson*, 105 Wn. App. 485, 492, 20 P.3d 975 (2001).

B. Washington Law Does Not Support the Use of Privilege Instructions Authorizing Bounty Hunters to Enter Private Property and Use Force to Gain Entry to a Third Party Dwelling

A bondsman's authority to apprehend and surrender a bondee derives from three sources: (1) the Federal common law principles enunciated by the Supreme Court in *Taylor*, *Taylor v. Taintor*, 83

U.S. (16 Wall.) 366, 371. 21 L.Ed. 287 (1873); (2) statutory authorization; and (3) the contract between the surety and the principal. None of the sources from which a bounty hunter derives his authority provides him with a privilege to enter the private dwelling of a third party.

1. **United States Supreme Court Case *Taylor v. Taintor* recognizes the broad powers of a bail bondsman through his contract with the bondee, but provides no privilege to enter third party residences**

The *Taylor* court defined a bondsman's common law arrest rights as follows:

"When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge; and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another State; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the rearrest, by the sheriff, of an escaping prisoner * * *. It is said: "the bail have their principal on a string, and may pull the string whenever they please, and render him in their discharge."

Taylor, 83 U.S. at 371-72 (*emphasis added*).

In several states, courts have had to clarify the bounty hunter's authority under *Taylor*. Those courts have consistently been "unwilling to accept the authority of bondsmen to recapture their principals in situations where bondsmen enter third-party homes to recapture a fugitive." Todd Barsumian, *Bailbondsmen and Bounty Hunters: reexamining the right to capture*, 47 *DrakeLr* 877, 891 (1999); *State v. Portnoy* (1986), 43 *Wn.App.* 455, 718 *P.2d* 805 (upheld bail agent's conviction and rejected claim that bondsman may sweep from his path all third parties who he believes are blocking his search for his client, without criminal liability); *Mishler v. State*, 660 *N.E.2d* 343, 345-46 (*Ind. Ct. App.* 1996) (holding no authority gives a bondsman the right to forcibly enter the dwelling of a third person without that person's consent); *State v. Tapia*, 468 *N.W.2d* 342, 344 (*Minn. Ct. App.* 1991) (holding the contractual authority of a bondsman does not give them the authority to infringe upon the rights of third parties); *State v. Lopez*, 734 *P.2d* 778, 784 (*N.M. Ct. App.* 1986) (holding the statutory right of a bondsman to recapture a principal does not give the bondsman a right to an armed entry of a third party's home); *State v. Mathis*, 349 *N.C.* 503, 509 *S.E.2d* 155 *N.C.* (Dec 31, 1998) (the surety must first have the

consent of the homeowner to enter the premises and conduct a search).

In *Mishler*, the Indiana court addresses the issue of whether two bondsmen had legal authority under *Taylor* to force their way into a bondee's mother's home without her consent. *Mishler*, 660 N.E.2d at 345-46. The facts in *Mishler* are similar to the facts at hand;

bondsmen, who had been unable to find their principal, at his home address, proceeded to [his] mother's home, whose address also appeared on the bond application. . . They were unable to locate [him], and after talking with several people about [his] whereabouts they went to his mother's house. When [his] mother came to the door, recovery agents questioned her about her son's whereabouts; unsatisfied with her answers, recovery agents kicked the door open; entered the apartment knocking her to the ground; and threatened her with his fist. Both bondsmen were then charged and convicted of battery and trespass.

Barsumian, 47 DrakeIr at 891. On appeal of the recovery agent's criminal convictions, the *Mishler* court examined common-law authority of bondsmen, noting that the rule in *Taylor* was silent on the right of the bondsmen to forcibly enter a third party's home to recapture their principals. *Id.* The court examined the early case of *Turner v. Wilson*, 49 Ind. 581, 586 (1875), which contained the broad statement that a "bail [bondsmen] may, by virtue of his piece

[bond undertaking], take him [the principal] in any house or place . . . at any time, and, upon demand, may break open doors.” *Id.* The court analyzed that “[Turner] did not involve a bail bondsman's forcible entry into the dwelling of a third person.” *Id.* “*Turner* concerned a sheriff's arrest of the principal on the authority of a recognizance bond obtained from the surety.” *Mishler*, 660 N.E.2d. at 345. The *Mishler* court also cited an Indiana statute empowering a bondsman to arrest his principal and the state's citizen arrest statute, and concluded that nowhere is a bondsman authorized to forcibly enter a third party's dwelling to arrest the principal. *Id.* at 345-46 (“We are mindful that [. . .] ‘the citizen's arrest statute’ permits a person to arrest another individual under certain circumstances, it does not authorize a bondsman to forcibly enter the private dwelling of a third party to arrest the principal”); Ind.Code 35-33-1-4.

2. Washington State leaves the rights and privileges given to bounty hunters to be defined by the contractual provisions of the bond agreement

RCW Chapter 18.185 does not provide bounty hunters with their power to apprehend a fugitive bondee. The statute is silent as to the source of their powers, other than to authorize the transfer of

the bail bond agent's contractual authority over to the bounty hunter/bail recovery agent if specifically authorized in a contract. RCW 18.185.280 ("A contract entered into under this chapter is authority for the person to perform the functions of a bail bond recovery agent as specifically authorized by the contract and in accordance with applicable law"). It does not address how the surety may effect such an arrest, other than by placing some limitations on bounty hunters, which are not covered under common law torts. See RCW 18.185.250-RCW18.185.300; RCW 18.185.110. The legislature makes no mention of authority to enter a third party dwelling without consent to apprehend a fugitive bondee. See RCW 18.185.

In Washington State, "[a bounty hunter's] power to apprehend fugitives does not derive from statute; rather, its source is the contractual relationship between the bail bond company and its bondee." *State v. Garcia*, 146 Wash.App. 1022 (Wash.App. Div. 1) (citing *State v. Portnoy*, 43 Wn.App. 455, 466, 718 P.2d 805 (1986) (noting that a bail bondsman has certain extraordinary powers resulting from his contract with his client)). The only statutes in Washington that relate to bounty hunters are regulations under RCW 18.185, wherein the legislature stated that by creating

this regulatory scheme it did not intend to "restrict or limit in any way the powers of bail bond agents as recognized in and derived from the United States Supreme Court case of *Taylor v. Taintor*. [83 U.S. (16 Wall.) 366, 371. 21 L.Ed. 287 (1873)]." RCW 18.185.260(6). Washington has interpreted Taylor as "broad powers a bail bondsman obtains through his contract with the bondee." *State v. Garcia*. 146 Wash.App. 1022. 2008 WL 2955881 (Wash.App. Div. 1).

In absence of contractual authority to enter a particular home, Washington applies the general common law principals of torts to hold bounty hunters accountable for their actions. That is the only way to keep them held accountable. Bounty hunters shall be held liable under the same tort law as everyone else, absent a contract given them a specific power. If they cannot apprehend a bondee within the bounds of the law, then they may contact law enforcement to make an arrest, as that is the proper authority who is able to enter private dwellings with warrants.

C. There is no Contractual Language in the Indemnity Agreement to Give Bounty Hunters, Luna, Wirts, and Peterson, the Right to Forcibly Enter Ron and Dorothy Applegate's Land and Home

The contractual authority of a bondsman does not provide justification to infringe on third party rights. See *Portnoy*, 718 P.2d at 811. The surety-principal contract generally authorizes the bail bondsman, or his agent, to exercise jurisdiction and control over the principal during the period for which the bond is executed. However, stating the obvious, any contractual authority, depends on a particular contracts explicit terms.

The court must examine the language of the bail bond agreement, the parties to that agreement, and what rights the parties may have contracted away in that agreement. Here, Elizabeth Applegate never signed any contract so is not a party and has not given up any rights to Lucky Bail Bonds. Ex. 8. Dorothy Applegate is a party to a contract with Lucky Bail Bonds. That contract is a Bail Bond Indemnity Agreement. There is no language in that contract that even arguably could be construed to give away her and her husband Ron's rights to the quiet enjoyment of their home and land. Ex. 8. The language that is in the contract, does nothing more than promise to pay Lucky Bail Bonds certain amounts of money in the event that Elizabeth Applegate fails to appear. Ex. 8.

D. Instructions #17, #39 and #41 inaccurately State the Law in Washington by Providing a Privilege That Allows Bounty Hunters to Enter a Third Party Home and Use Force to Gain Entry

The language in Instructions #39 and #41 comes in part from the Restatement (Second) of Torts, § 204,¹ §205², §206.³ CP 20-

¹ Restatement (Second) of Torts § 204. Entry To Arrest For Criminal Offense

The privilege to make an arrest for a criminal offense carries with it the privilege to enter land in the possession of another for the purpose of making such an arrest, if the person sought to be arrested is on the land or if the actor reasonably believes him to be there.

² Restatement (Second) of Torts § 205 Entry To Recapture Or To Prevent Crime

The following privileges carry with them the privilege to enter land in the possession of another for the purpose of exercising the particular privilege, if the person sought is on the land or the actor reasonably believes him to be there: the privilege

(A) to recapture a person previously arrested in criminal or civil proceedings or a convicted prisoner, or (B) to take into custody under a warrant, valid or fair on its face, one who has been adjudged a lunatic, or (C) to recapture a person who having been adjudged a lunatic has been taken into custody, or (D) to take into custody a person for whose appearance in court security has been given by the actor, or (E) to prevent one from committing a serious crime or to detain a dangerous lunatic.

³ Restatement (Second) of Torts § 206. Forcible Entry Of Dwelling To Arrest, Recapture, Prevent Crime, And Related Situations

(1) The privileges to enter land stated in §§ 204 and 205 carry with them the privilege to use force to enter a dwelling if the person sought to be taken into custody is in the dwelling. Such force may be used only after explanation and demand for admittance, unless the actor reasonably believes such demand to be impractical or useless.(2) Although the person sought is not in the dwelling, the actor is privileged to use force as stated in subsection (1) if he reasonably believes him to be there, and enters in the exercise of a privilege (A) to make a criminal arrest under a warrant valid or fair on its face, or (B) to make a criminal arrest under an order of a court acting within its jurisdiction, or (C) to effect a recapture on fresh pursuit of one who has been lawfully arrested on civil or criminal proceedings or who is a convicted prisoner, or (D) to take into custody under a warrant valid or fair on its face, or to recapture on fresh pursuit, one who has been adjudged a lunatic, or (E) to take into custody a person for whose appearance in court security has been given by the actor, or (F) to prevent one from committing a serious crime or to control a dangerous lunatic.

22. These Restatement provisions have never been adopted in reference to bounty hunters in any state, including Washington. The only case law that has ever referenced these provisions relates to law enforcements privileges to enter land in order to effect an arrest. *Prahl v. Brosamle*, 98 Wis.2d 130, 295 N.W.2d 768 (Ct. App. 1980). Luna, Wirts, and Peterson are not law enforcement agents, they cannot execute arrest warrants, and therefore application of these provisions in Instructions #39⁴ and #41⁵ was improper. They can merely locate, apprehend and surrender, and they are free to call law enforcement, and assist in an arrest with law enforcement officers present and directing.⁶ They did not take that route, and now need to be held accountable.

⁴ Instruction 39: “The following privilege carries with it the privilege to enter land in possession of another for the purpose of exercising the particular privilege, if the person sought is on the land or the actor reasonably believes him to be there: the privilege to take into custody a person for whose appearance in court security has been given by the actor.” CP 111.

⁵ Instruction 41: “The privilege to enter land carry with it the privilege to use force to enter a dwelling if the person sought to be taken into custody is in the dwelling. Such force may be used only after explanation and demand for admittance, unless the actor reasonably believes such demand to be impractical or useless.

Although the person sought is not in the dwelling, the actor is privileged to use force if he reasonably believes him to be there, and enters in the exercise of a privilege to take into custody a person for whose appearance in court security has been given by the actor.” CP 113.

⁶ Restatement (Second) of Torts § 207. Entry To Assist In Making Arrest Or Other Apprehension

The language from Instruction #17⁷ comes from the trespass statute plead by Petitioner, RCW 4.24.630. However, Instruction #17 also includes additional elements. Those additional elements added in by the trial court require Ron Applegate / Plaintiff to prove that the bounty hunters, Wirts, Luna and Peterson, had no privilege to enter his land, and also that they did not believe that they had a privilege to enter his property. If this were a true statement of the law, the results would be absurd, and anyone could go anywhere at any time with no respect to private property rights so long as they had a belief that they could do so. Not only that, but the result of this instruction is not to provide a defense, but it removes the ability to hold someone accountable for their actions of trespass, raising the standard to require that the Plaintiff prove that there was no belief by the Defendant that he had a privilege. This is impossible

The privilege to assist in making an arrest or other apprehension carries with it the same privilege to enter land in the possession of another for the purpose of rendering such assistance which the actor would have if he were himself privileged to make the arrest or apprehension.

⁷ Instruction 17: "Plaintiff claims that Defendant s . . . each trespassed on his property. To establish this claim . . . Plaintiff must prove the following:

- 3) [. . .] Defendant did not have a privilege to be on Plaintiffs property; and
- 4) Defendant intentionally and unreasonably committed an act, or acts, while knowing or having reason to know, that he did not have Plaintiff's permission or a privilege to be on Plaintiffs property."

CP 87.

criteria, and not a true statement of the law which is designed to protect property rights.

Chapter 4.24 of the RCW has a number of statutes on “liability immunity,” however no statute was passed by the legislature for liability immunity for bounty hunters trespassing in violation of RCW 4.24.630. See RCW Chapter 4.24. Had granting immunity been the legislature’s intent, it would have created a statute granting immunities to bounty hunters who trespassed on private property, but the legislature did not do so. Accordingly, to add extra requirements at the close of trial, requiring that the Plaintiff disprove a privilege to the jury is an inaccurate statement of the law and requires reversal and remand for a new trial.

These instructions each caused the jury to enter a verdict in favor of the Defendants as to the claims of trespass, assault and battery, because jurors believed that under the law bounty hunters were able to use force against a third party and forcibly enter a private dwelling owned by a third party.

V. CONCLUSION

Plaintiff requests this court find in favor of Mr. Applegate, and reverse the civil judgement, remanding this case to the Whatcom

County Superior Court for a new trial with accurate law in the State of Washington, the law that holds bounty hunters accountable for breaking a man's ribs to make money.

DATED this 23rd day of April, 2015

THE LAW OFFICES OF ROBERT D. BUTLER, PLLC



Emily C. Beschen, WSBA #43813
Robert D. Butler, WSBA #22475
Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify, under the penalty of perjury under the laws of the State of Washington that I personally caused **APPELLANT'S BRIEF** to be delivered to the following individuals via Email & US Postal Mail:

Spencer Freeman
Freeman Law Firm, Inc.
1107 1/2 Tacoma Avenue South
Tacoma, WA 98402
Email: sfreeman@freemanlawfirm.org
jcully@freemanlawfirm.org

DATED this 23rd day of April, 2015 at Bellingham, Washington.



Samantha Kahabka
Legal Assistant