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SUPREME COURT
STATE OF WASHINGTON
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No. 99041-7

**THE SUPREME COURT
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

V.

SAMMY WEAVER, APPELLANT

ANSWER TO PETITION FOR REVIEW

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By
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A. IDENTITY OF RESPONDENT

The State of Washington, the respondent below, asks this court to deny Sammy Weaver's petition to this court seeking review of the decision referred to in Section B, below.

B. DECISION OF COURT OF APPEALS

The State of Washington requests this court to deny review of the Court of Appeals' November 5, 2019 (amended August 18, 2020) "Unpublished Opinion" in case number 51734-5-II, which affirmed Weaver's jury trial convictions from Mason County Superior Court No. 17-1-00298-4.

C. ISSUES PRESENTED FOR REVIEW

Weaver's contention of error is premised upon an assumption, without corroborating authority, that proof of the crime of criminal trespass in the first degree requires proof beyond a reasonable doubt that he knew that his act of entering another person's house without license, invitation, or other privilege to do so, was unlawful. Based upon this assumption, Weaver contends that the trial court's jury instruction defining knowledge (Jury Instruction No. 14) – which stated in relevant

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part that “[i]t is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful or an element of a crime” – unconstitutionally relieved the State of the burden of proving beyond a reasonable doubt he knew that his act of knowingly entering or remaining in the house unlawfully (without license, invitation, or other privilege to do so) was against the law.

D. STATEMENT OF THE CASE

On August 19, 2017, a citizen by the name of Kyle Ulrich was moving into an apartment that he had rented near Belfair, Washington. RP 45-46, 53, 80. When he approached the apartment, he heard a noise inside that he thought was the sound of breaking glass, so he called the police. RP 53. Deputy Ellis of the Mason County Sheriff’s Office arrived to investigate. RP 53, 80.

When Deputy Ellis arrived, he stood at the entrance to the apartment and knocked on the door while announcing that he was a police officer. RP 54, 81. Deputy Ellis received no response to his knock and announce. RP 54, 81. Deputy Ellis then knocked again and then announced that he was entering the apartment. RP 54, 82. But still, no one answered. *Id.* So, Deputy Ellis entered the apartment and while

inside he announced again, but still, no one answered. RP 54, 83. Deputy Ellis then rounded a corner and saw the defendant, Sammy Weaver, on the floor. RP 83. Deputy Ellis placed Weaver under arrest. RP 83-85.

Neither Mr. Ulrich nor the owner of the apartment building had given Weaver permission to in the apartment. RP 49-50, 75. Weaver said that he had arrived at the apartment during the night and that he was tired and didn't have anywhere to sleep, so he knocked on the door and didn't get any response, so he walked inside. RP 85.

The State charged Weaver with residential burglary. CP 6-7. At trial, the court instructed the jury on the lesser included offense of criminal trespass in the second degree. CP 45-47. The jury returned a not guilty verdict on the charge of residential burglary but found Weaver guilty of the lesser included offense of criminal trespassing in the first degree. CP 51-52.

Weaver did not propose a jury instruction based upon the statutory defenses provided by RCW 9A52.090; nor did he propose any other instructions. Weaver had no objection to the State's proposed instructions, which were adopted by the court. RP 17. Four of the court's instructions,

numbers 8, 12, 13, and 14, are particularly relevant to the issue currently advanced by Weaver.

Jury instruction number 8 instructed the jury as follows: “A person enters or remains unlawfully in or upon premises when he is not then licensed, invited, or otherwise privileged to do so enter or remain.” CP 42.

Jury instruction number 12 instructed the jury as follows: “A person commits the crime of criminal trespass in the first degree when he knowingly enters or remains unlawfully in a building.” CP 46.

Jury instruction number 13, the to-convict instruction (in relevant part), included as an element that “the defendant knew that the entry or remaining was unlawful[.]” CP 47.

Finally, jury instruction number 14 stated in relevant part, as follows:

A person knows or acts knowingly or with knowledge with respect to a fact, circumstance, or, result when he is aware of that fact, circumstance, or result. *It is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful or an element of a crime.*

If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact....

CP 48 (emphasis added).

E. ARGUMENT WHY REVIEW SHOULD BE DENIED

Weaver contends that review is appropriate under RAP 13.4(b)(3), which states that this Court will accept review “if a significant question of law under the Constitution of the State of Washington or of the United States is involved[.]” Weaver contends that jury instructions numbers 13 and 14 are contradictory because number 13 includes as an element that Weaver knew his entry or remaining was unlawful, but number 14 states that he need not know that his acts are a crime. However, Weaver limits his contention of error to instruction number 14, stating that “[t]he source of the error was not the to-convict instruction, but the inclusion of WPIC 10.02’s optional language in the definition of ‘knowledge’ (Instruction No. 14), which was proposed by the State.” Petition for Review at 10.

In essence, Weaver contends that if he did not know that it is a criminal law violation to enter another person’s house without license, invitation, or other privilege, then it is not a crime to so enter. Thus, he contends, jury instruction number 14 is erroneous because it is a misstatement of law to the extent that it states that “[i]t is not necessary that the person know that the fact, circumstance, or result is defined by

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law as being unlawful or an element of a crime.” CP 48. But Weaver cites no authority for his assertion that the State must prove beyond a reasonable doubt that he knew his act of entering another person’s house without license, invitation, or other privilege is a criminal law violation.

But in any event, the jury received no instruction from the court regarding the statutory or common laws beyond those contained in the court’s instructions. Within the four corners of the court’s instructions, the jury was instructed that “[a] person enters or remains unlawfully in or upon premises when he is not then licensed, invited, or otherwise privileged to do so enter or remain.” CP 42. In turn, jury instruction number 13, the to-convict instruction, included as an element that “the defendant knew that the entry or remaining was unlawful[.]” CP 47. Or, put another way, the court’s instructions – which are the law of the case and are the only source of law the jury should consider – informed the jury that to be guilty of the crime of criminal trespass in the first degree, the jury must find that Weaver knew that his entry or remainder in the house was without license, invitation or other privilege.

Jury instruction number 14 merely clarified the other instructions and informed the jury that Weaver need not know that his act of entering

the house unlawfully, i.e., without license, invitation, or other privilege, is “defined by law as being unlawful or an element of a crime.” CP 48.

F. CONCLUSION

The trial court’s instructions did not relieve the State from its burden of proving each element of the offense of criminal trespass in the first degree. Thus, this case does not present “a significant question of law under the Constitution of the State of Washington or of the United States is involved[,]” and, therefore, review should be denied under RAP 13.4(b)(3).

Respectfully submitted this 7th day of January, 2021.

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