

No. 31936-9-III

FILED  
July 01, 2014  
Court of Appeals  
Division III  
State of Washington

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent

v.

WILLIAM LEE FULTZ, Appellant.

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BRIEF OF APPELLANT

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## I. ASSIGNMENTS OF ERROR

1. The evidence was insufficient to support the convictions for first degree burglary and first degree robbery with deadly weapon enhancements because the State failed to prove beyond a reasonable doubt that Mr. Fultz was an accomplice.

2. The evidence was insufficient to support the two convictions for second degree assault with deadly weapon enhancements because the State failed to disprove self-defense beyond a reasonable doubt.

### *Issues Pertaining to Assignments of Error*

1. Was the evidence insufficient to support the convictions for first degree burglary and first degree robbery with deadly weapon enhancements because the State failed to prove beyond a reasonable doubt that Mr. Fultz was an accomplice?

2. Was the evidence insufficient to support the two convictions for second degree assault with deadly weapon enhancements when the State failed to disprove self-defense beyond a reasonable doubt?

## II. STATEMENT OF THE CASE

Mr. Fultz was charged by amended information with count 1,

first degree burglary with a deadly weapon enhancement; count 2, first degree robbery with a deadly weapon enhancement; count 3, second degree assault against Nicholas Knight with a deadly weapon enhancement; and count 4, second degree assault against Michael Mendoza with a deadly weapon enhancement. (CP 144). The case proceeded to jury trial.

Tamara Knight lived in a trailer in Deer Park with her friend, Carrie, and her son, Nicholas Knight. (8/27/13 RP 52). Two other kids, Michael Mendoza and Tanner, also lived there. (*Id.*). Ms. Knight wanted to sell her Ford Bronco so she could pay the rent. (*Id.* at 53). A lady, Donna, wanted the vehicle and put down \$140 on the \$500 selling price. (*Id.* at 53-54). Jason Koch was with her. (*Id.* at 54). The Bronco had a problem with its battery. (*Id.*). Donna did not come back and pay the rest of the money so Ms. Knight sold the Bronco to someone else. (*Id.*).

A very angry Donna came by the trailer with two men, Mr. Koch and William Fultz, and another woman about 11 p.m. on April 4, 2013. (8/27/13 RP 55-56, 77). Ms. Knight gave the \$140 back to Donna, who accidentally ripped the bills in half grabbing it out of her hand. (*Id.* at 57, 65). Donna left mad with her group. (*Id.*).

Ms. Knight said Donna turned around and told Mr. Fultz to take care of the problem. (*Id.*).

Three men showed up later at the trailer around 3 a.m. on April 5, 2013. (8/27/13 RP 57, 87). Mr. Koch, wearing a hooded jacket, came to the front door and opened it with Ms. Knight standing there. (*Id.* at 58, 67). He pulled her out the door. (*Id.*). One of the men, Robert Moody, had a baseball bat. (8/28/13 RP 151). Ms. Knight saw Nicholas fighting with Mr. Fultz. (*Id.* at 59). Her friend called 911. (*Id.*). The three guys left in a white Yukon-type vehicle. (*Id.* at 60). Ms. Knight saw a woman inside who she had not seen before. (*Id.* at 67).

Law enforcement arrived and Ms. Knight told them what happened. (8/27/13 RP 60). A PlayStation was missing from the trailer. (*Id.*). She did not see Mr. Fultz or anyone else use the baseball bat. (*Id.* at 62, 74). Ms. Knight did not know Donna before. (*Id.* at 65).

Mr. Knight said Donna, Mr. Koch, and Mr. Fultz showed up at the trailer around 11 p.m. on April 4, 2013. (8/27/13 RP 77). They came to get the money back for the Bronco that had been sold to someone else. (*Id.* at 78). Donna was very angry. (*Id.*).

He also heard her tell Mr. Fultz to take care of the problem. (*Id.* at 79). The men came back at 3 a.m. (*Id.*). Mr. Knight had just put a movie into his PlayStation so he could lie down and watch and go to sleep. (*Id.*). Mr. Mendoza looked out the window; Mr. Knight saw a white Suburban at the end of the street. (*Id.*). He heard a knock at the door. (*Id.* at 80).

Mr. Knight attacked Mr. Fultz before “we got attacked.” (8/27/13 RP 80). He knew he was getting into a fight. (*Id.*). Mr. Knight got hit in the head from behind as he began wrestling with Mr. Fultz. (*Id.*). He had Mr. Fultz in a headlock and Ms. Knight attacked him and ripped the shirt off his back. (*Id.* at 81). Mr. Fultz got free. (*Id.*). The Suburban drove past the house. (*Id.*). The PlayStation was gone. (*Id.*).

Deputy Damon Anderberg responded to the trailer on a “trouble unknown” call in Deer Park. (8/27/13 RP 87). He talked to the trailer’s residents and got information on the Suburban. (*Id.* at 88). Its description was put out to WSP. (*Id.*). Ms. Knight was agitated and upset as were Mr. Knight, who had abrasions, and Mr. Mendoza, who had been hit and bruised by a bat to the back of his



leg. (*Id.* at 88-89, 106). A WSP trooper stopped the Suburban at Highway 395 and Hastings. The PlayStation was recovered. (*Id.* at 96-97).

Trooper Robert Spencer was just going off duty about 4 a.m. on April 5, 2013, and was looking for the white Suburban. (8/27/13 RP 112, 114). He spotted the vehicle going southbound and called for backup. (*Id.* at 115). Another trooper helped out on the traffic stop. (*Id.*). Three males and a female were in the Suburban. (*Id.*). The men were identified as Robert Moody, Jason Koch, and William Fultz. (*Id.* at 116). Mr. Moody was the driver with Mr. Koch and Mr. Fultz in the back. The woman, Lisanne Courtney, was on the right front passenger side. (*Id.* at 118, 125). A baseball bat was in the vehicle. (*Id.* at 118, 125-26).

Deputy Ryan Truman responded to a burglary in progress call in Deer Park the early morning of April 5, 2013. (8/27/13 RP 121-23). Mr. Knight was not wearing a shirt and had visible injuries. (*Id.* at 123). At the traffic stop, the deputy gave Mr. Fultz his rights. (*Id.* at 130). He agreed to talk and said he went with Jason to get his battery back and they were assaulted. (*Id.*). Mr.

Fultz told the deputy he was hit in the back of the head with a 2x4 and had his shirt nearly ripped off while being held on the ground. (*Id.* at 131). He did not know anything about the PlayStation. (*Id.*) Mr. Fultz did not go into the home. (*Id.*) The door was open, four guys came out, and beat him up. (*Id.*) Robert Moody had the bat with him when he was at the front door. (*Id.* at 131-32). Deputy Truman said Mr. Fultz had injuries. (*Id.* at 132). A 2x4 was found at the scene in Deer Park. (*Id.* at 139).

Mr. Moody testified that his occupation on April 5, 2013, was selling dope and collecting money. (8/28/13 RP 150). He drove to Deer Park that early morning with a woman and two males. (*Id.*) Not knowing what he was getting into, Mr. Moody had a Louisville Slugger baseball bat and took it to the residence with him. (*Id.* at 151). The two males went with him to the front door. (*Id.*) He knocked on the door and saw a female look through the blinds. A male opened the door and Mr. Moody went in. (*Id.* at 152). Two guys were at the front of the trailer. (*Id.*) As Mr. Moody confronted those inside about the money owed, he saw people out of the corner of his eye, turned around, and connected with two of them with the baseball bat. He took the PlayStation. (*Id.*) He got hit on

the back of the head when leaving the trailer. (*Id.* at 155). The two individuals who came with him then left with Mr. Moody. (*Id.*). He acknowledged that he pleaded guilty to two assaults and robbery for the incident and got 48 months in prison. (*Id.* at 158).

The court instructed the jury on self-defense and accomplice liability. (CP 166, 177). The jury found Mr. Fultz guilty of first degree burglary, first degree robbery, and two counts of second degree assault, all with deadly weapon enhancements. (8/28/13 RP 259-60; CP 183-90). At sentencing, the State acknowledged that the two counts of assault merged with the first degree robbery, count 2. (9/11/13 RP 271-72). The court sentenced Mr. Fultz to a standard range sentence of 324 months total confinement, including two consecutive 24-month deadly weapon enhancements on counts 1 and 2. (CP 221, 222). This appeal follows. (CP 215).

### III. ARGUMENT

A. The State's evidence was insufficient to support the conviction for second degree assault as it failed to disprove self-defense beyond a reasonable doubt.

Although an information that charges an accused as a principal adequately apprises him of his potential liability as an

accomplice, *State v. Rodriguez*, 78 Wn. App. 769, 773-74, 898 P.2d 871 (1995), the accused's mere presence at the scene of a crime, even if coupled with assent to it, is insufficient to prove complicity. The State must prove the defendant was ready to assist in the crime. *State v. Luna*, 71 Wn. App. 755, 759, 862 P.2d 620 (1993).

Here, Mr. Fultz did not have the baseball bat, did not hit anyone with the bat, did not enter the trailer, did not converse or interact with the residents of the trailer, did not know what was going on in the trailer as he was attacked outside by Mr. Knight, and did not take the Playstation. These undisputed facts show that the only connection Mr. Fultz had with the trailer incident was his mere presence at the scene. This is insufficient to prove accomplice liability for any of the four crimes with which he was charged and convicted. *Luna*, 71 Wn. App. at 759. Even if Mr. Fultz assented to them, that is also not enough to prove complicity. *Id.* Mr. Moody was the sole bad actor. In these circumstances, the State could not, and did not, prove Mr. Fultz was ready to assist in the crimes. Because the only way for the State to convict was through

accomplice liability and it has failed to show complicity, Mr. Fultz's convictions, along with the deadly weapon enhancements, must be reversed and the charges dismissed.

B. The evidence was insufficient to support the two convictions for second degree assault with deadly weapon enhancements because the State failed to disprove self-defense beyond a reasonable doubt.

Mr. Fultz acted in self-defense. The State must prove beyond a reasonable doubt every element of a charged crime. U.S. Const. amends. 5, 14; Wash. Const. art. 1, § 3; *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed.2d 368 (1970). Since a claim of self-defense negates the essential element of intent for second degree assault, the burden is on the State to disprove self-defense beyond a reasonable doubt. *State v. Acosta*, 101 Wn.2d 612, 616, 683 P.2d 1069 (1984); *State v. Redwine*, 72 Wn. App. 625, 629, 865 P.2d 552, *review denied*, 124 Wn.2d 1012 (1994). The court gave a self-defense instruction here. (Instruction 25, CP 177).

For self-defense, the defendant must have subjectively

feared he was in imminent danger of death or great bodily harm; this belief was objectively reasonable; the defendant exercised no greater force than was reasonably necessary; and the defendant was not the aggressor. *State v. Callahan*, 87 Wn. App. 925, 929, 943 P.2d 676 (1997). Evidence of self-defense must be viewed “from the standpoint of the reasonably prudent person, knowing all the defendant knows and seeing all the defendant sees. *State v. Janes*, 121 Wn.2d 220, 238, 850 P.2d 495 (1993). The jury then is to stand in the shoes of the defendant, consider all the facts and circumstances known to her, and determine what a reasonable person in the same situation would have done. *Id.*

The confrontation must not be instigated or provoked by the defendant. (Instruction 27, CP 179). Mr. Knight testified he attacked Mr. Fultz first. There was also no indication in anyone’s testimony that Mr. Fultz provoked or instigated the confrontation. Even viewed in a light most favorable to the State, the evidence still fell short of disproving beyond a reasonable doubt that Mr. Fultz acted in self-defense. *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). He was not the aggressor and acted in self-defense after Mr. Knight admittedly attacked him. The second

degree assault conviction with a deadly weapon enhancement, involving Mr. Knight, cannot stand and the charge must be dismissed.

As for the other assault conviction with a deadly weapon enhancement, Mr. Fultz had nothing to do with Mr. Mendoza's getting hit with a bat. Mr. Moody alone assaulted him. The State's evidence failed to prove Mr. Fultz was an accomplice. *Luna*, 71 Wn. App. at 759. The undisputed facts further show that he was engaged in fighting off Mr. Knight in self-defense after being attacked by him. *Callahan*, 87 Wn. App. at 929. Even though he was not engaged with Mr. Mendoza, Mr. Fultz's assault conviction must be reversed because he was not an accomplice and he was acting in self-defense throughout the incident. In these circumstances, the second degree assault conviction with a deadly weapon enhancement must be reversed and the charge dismissed. *Janes, supra*.

## V. CONCLUSION

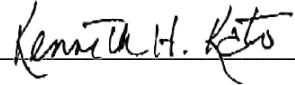
Based on the foregoing facts and authorities, Mr. Fultz respectfully urges this court to reverse his conviction and dismiss the charges.

DATED this 1<sup>st</sup> day of July, 2014.

  
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CERTIFICATE OF SERVICE

I certify that on July 1, 2014, I served a copy of the brief of appellant by first class mail, postage prepaid, on William Fultz, # 369828, 191 Constantine Way, Aberdeen, WA 98520; and by email, as agreed by counsel, on Mark E. Lindsey at [SCPAappeals@spokanecounty.org](mailto:SCPAappeals@spokanecounty.org).

  
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