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No. 95728-2
Court of Appeals No. 49859-6-II

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RONLEY SANTER

Appellant.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND RELIEF REQUESTED

Pursuant to RAP 13.4, Petitioner Ronley Santer asks this Court to accept review of the opinion of the Court of Appeals in *State v. Santer*, 49859-6-II.

B. OPINION BELOW

The Court of Appeals ruled as a matter of law a person is not entitled to jury instructions regarding the lawful use of force, including instructions regarding defense of another and the right to act on appearances, where they are charged as an accomplice to a robbery.

C. ISSUE PRESENTED

Decisions from this Court and the United States Supreme Court have long held that the Due Process Clause of the Fourteenth Amendment requires the State prove each element of an offense beyond a reasonable doubt. In addition, the Due Process Clause requires that where a fact negates an essential component of an offense, the State must disprove that fact beyond a reasonable doubt. Where the lawful use of force negates a fact necessary for conviction and there is some evidence supporting the lawful use of force, the trial court must instruct the jury on the use of force and the State's burden to disprove it. Did the trial err when it refused to instruct the jury on the lawful use of force?

D. STATEMENT OF THE CASE

Colin Shanklin spent a summer evening in his trailer in Vancouver drinking beer, smoking marijuana and playing video games. RP 136-38. When he ran out of beer, he rode his bike to a nearby convenience store to purchase more. RP 138. He recalled making several trips to the store that evening purchasing beer, cigarettes and perhaps some food. RP 138-39. On each trip, Mr. Shanklin rode along the perimeter of Evergreen Park. RP 140.

Ronley Santer and a group of friends were gathered in the park that evening. RP 312. When Mr. Santer first arrived at the park he encountered a former co-worker, whose name he could not recall. RP 309-10. The two joined a larger group of people who Mr. Santer knew and who, like him, lived close by. RP 310.

As they socialized in the park, Mr. Shanklin, riding a bicycle, approached Mr. Santer and his former co-worker. RP 316. Mr. Shanklin asked if the two had “anything” to sell, perhaps a request to buy drugs. RP 317. Mr. Santer responded they did not and began walking back to the group. RP 317-18.

As he walked back to the group, Mr. Santer heard a punch and turned to see his friend and Mr. Shanklin fighting on the ground. RP

318. Mr. Santer did not know who threw the first punch, but saw Mr. Shanklin on top of his friend. RP 319. Mr. Santer went to his friend's assistance and began hitting Mr. Shanklin. RP 320-21. In the course of the struggle, Mr. Shanklin stabbed Mr. Santer in the calf with a pocketknife. Mr. Shanklin then ran from the park. RP 322. After Mr. Shanklin left the park, Mr. Santer noticed his former co-worker had left as well. *Id.*

Mr. Shanklin claimed he was riding home when several men, including Mr. Santer, waived him over. RP 142. According to Mr. Shanklin, the men asked him for a cigarette. *Id.* As they talked, one of the men, not Mr. Santer, commented that he liked Mr. Shanklin's bike and grabbed it. RP 146. Mr. Shanklin testified that when he resisted, Mr. Santer punched him in the side of his head. RP 146-47. Mr. Shanklin claimed he fell to the ground and the men hit him until he stabbed one of the men in the leg. RP 147-48. Mr. Shanklin left on foot and called police. RP 151.

The State charged Mr. Santer with first degree robbery. CP 3.

At trial, the court refused to instruct the jury that the use of force is lawful when used in defense of another and that Mr. Santer was entitled act in defense of another based upon the circumstances as they

reasonably appeared to him even if mistaken. CP 7; RP 386.

The jury convicted Mr. Santer. CP 46

E. ARGUMENT

By refusing to instruct the jury on Mr. Santer's lawful use of force the trial court relieved the State of its burden of proving each of the necessary elements of the offense.

The Fourteenth Amendment Due Process Clause requires the State prove each essential element of the crime charged beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

The State is foreclosed from shifting the burden of proof to the defendant . . . when an affirmative defense *does* negate an element of the crime.

Smith v. United States, __ U.S. __, 133 S. Ct. 714, 719, 184 L. Ed. 2d (2013) (internal citations omitted); *see also State v. Deer*, 175 Wn.2d 725, 734, 287 P.3d 539 (2012), *cert. denied*, 133 S. Ct. 991 (2013).

Thus, in addition to the statutory elements of an offense, the State must disprove a defense where the defense negates an essential ingredient of the crime. *State v. McCullum*, 98 Wn.2d 484, 491-93, 656 P.2d 1064 (1983).

Applying this framework to the issue of the defense of others in a second degree robbery prosecution as an accomplice, it is clear the State must bear the burden of proving the use of force was unlawful.

RCW 9A.16.020(3) provides the use of force is lawful when:

. . . used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person . . .

Under RCW 9A.08.020(3)

. . . for one to be deemed an accomplice, that individual must have acted with knowledge that he or she was promoting or facilitating *the* crime for which that individual was eventually charged.

State v. Cronin, 142 Wn.2d 568, 579, 14 P.3d 752 (2000) (Emphasis in original).

To convict a person of first degree robbery as an accomplice the State must prove the person knowingly “agreed to aid in the commission of robbery **including** the use or threatened use of force to obtain property.” *State v. Farnsworth*, 185 W.2d 768, 780, 374 P.3d 1152 (2016) (Emphasis added.) If the State must prove a person’s knowledge and agreement to assist in the taking of property by force, the lawful use of force in defense of another negates the required knowledge and agreement. Proof of “knowledge” required the State

prove Mr. Santer “actually knew” he was assisting in the commission of the robbery. *State v. Allen*, 182 Wn.2d 364, 374, 341 P.3d 268 (2015) (citing RCW 9A.08.020(3) (accomplice must have actual knowledge that principal was engaging in the crime eventually charged); *State v. Shipp*, 93 Wn.2d 510, 517, 610 P.2d 1322 (1980).

The Court of Appeals brushes aside *Farnsworth*, stating this Court was merely stating the elements of the offense and the requirement that an accomplice must act with knowledge of that crime. Opinion at 7. That is precisely the point, Mr. Santer cannot knowingly assist in an unlawful taking by force, where he believes he is defending a person against the victim’s assault. The lawful use of force negates the state’s proof that he knowingly assisted in the taking of property by force as required by *Farnsworth*.

The court’s conclusion that accomplice liability has no impact on the analysis in this case transforms accomplice liability to strict liability for the acts of another. But courts have long held that “in for a dime in for a dollar” is not the standard for accomplice liability. Instead, the person must act with knowledge that they are assisting in the commission of “the” crime. *Cronin*, 142 Wn.2d at 578-79. With respect to accomplice liability in a robbery the Court has recently

explained the person must have actual knowledge that they are assisting in the theft of property by force. *Farnsworth*, 185 W.2d at 780. The defense of another negates the State's ability to prove the requisite knowledge of the use of force to take property as the two cannot coexist.

Contrary to the opinion, nothing in the plain language of RCW 9A.16.020 limits the negates analysis to only those offenses in which a specific mens rea is attached to the use of force. Rather the negates analysis simply concludes that, by definition, where the use of force is lawful, it negates the unlawfulness of any act. *McCullum*, 98 Wn.2d at 495. Robbery by definition makes force unlawful if it is used to commit a theft. RCW 9A.56.190. The unlawfulness of that force is negated by evidence that the force was used to defend another and not to commit a theft. In short, lawful use of force negates the intent to steal by force.

The State was required to prove Mr. Santer actually knew he was assisting in the commission of a crime; that he was aware his friend was taking Mr. Shanklin's bike by force. *Farnsworth*, 185 W.2d at 780. Defense of another specifically negates the actual knowledge required, as a person employing lawful force cannot actually be aware of facts "described by a statute defining an offense." The lawful use of

force and accomplice liability cannot coexist. A person cannot be criminally liable as an accomplice if his use of force was lawful. The defense negates an accomplice's actual knowledge that he is assisting in the commission of the crime charged.

The trial court erred and relieved the State of its burden of proof in refusing to instruct the jury on lawful force.

The opinion of the Court of Appeals is contrary to this Court's well established law regarding the lawful use of force. The opinion is contrary to this Court decision in *Farnsworth*. The opinion presents a substantial issue. This Court should accept review under RAP 13.4.

F. CONCLUSION

For the reasons above this Court should grant review and reverse Mr. Santer's conviction.

Respectfully submitted this 12th day of April, 2018.



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March 13, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RONLEY SANTER,

Appellant.

No. 49859-6-II

UNPUBLISHED OPINION

WORSWICK, J. — Ronley Santer appeals from his first degree robbery conviction, asserting that the trial court erred by denying his request to instruct the jury on the lawful use of force. Because lawful use of force does not negate an element of first degree robbery, the trial court properly denied Santer’s proposed jury instruction and we affirm his conviction.

FACTS

On the evening of July 6, 2016, Colin Shanklin rode his bicycle to purchase items from a gas station located near his Vancouver home. On his way back home from the gas station, three men who Shanklin did not know waived him over from a nearby park. The men asked Shanklin if he had any cigarettes; Shanklin stopped and gave each of the men a cigarette. One of the men told Shanklin that he liked his bike, grabbed the bike’s handlebars, and punched Shanklin on the left side of his head.

Shanklin fell to the ground, and all three men began punching and kicking him. Shanklin was able to free himself from the attack after stabbing one of the men in the leg with a pocketknife. Shanklin ran to his home and asked someone to call the police. Shanklin returned to the park and saw one of the men riding away on his bike.

Vancouver police officer David Krebs arrived, saw three men running from the park, and ordered them to stop. Two of the men stopped, and Krebs placed the men in custody. Krebs saw that one of the men, later identified as Santer, had blood on his right pant leg from an apparent stab wound. Shanklin identified Santer as one of the men who had attacked him.¹ The State charged Santer with first degree robbery, alleging accomplice liability in the commission of the crime.

At trial, Shanklin and Krebs testified consistently with the facts as stated above. Santer testified in relevant part that he was at the park on July 6 with a group of people that included his cousin and a former coworker. According to Santer, Shanklin approached the group on his bicycle and asked them if they had “anything for sale.” 3 Report of Proceedings (RP) (Jury Trial) at 316-17. Santer told Shanklin to leave the park before turning and walking away. Santer then heard a punch and someone fall to the ground before turning around and seeing Shanklin on top of his former coworker. Santer stated that he started hitting Shanklin in defense of his former coworker. Santer did not see his coworker after Shanklin ran away and did not know what had happened to Shanklin’s bicycle.

¹ Shanklin did not identify Santer as the man who had initially grabbed his bike and punched him.

Santer requested the trial court to provide the following jury instruction:

It is a defense to a charge of Robbery in the First Degree that the force used was lawful as defined in this instruction.

The use of force upon or toward the person of another is lawful when used by someone lawfully aiding a person who he reasonably believes is about to be injured in preventing or attempting to prevent an offense against the person and when the force is not more than is necessary.

The person using the force may employ such force and means as a reasonably prudent person would use under the same or similar conditions as they appear to the person, taking into consideration all of the facts and circumstances known to the person at the time and prior to the incident.

The State has the burden of proving beyond a reasonable doubt that the force used by the defendant was not lawful. If you find that the State has not proved the absence of this defense beyond a reasonable doubt, it will be your duty to return a verdict of not guilty.

Clerk's Papers (CP) at 7. Santer also requested a jury instruction stating that the law does not impose a duty to retreat. The trial court refused to give Santer's proposed jury instructions, concluding that lawful use of force is not a valid defense to first degree robbery under *State v. Lewis*, 156 Wn. App. 230, 238-39, 233 P.3d 891 (2010). The jury returned a verdict finding Santer guilty of first degree robbery. Santer appeals from his conviction.

ANALYSIS

Santer contends that the trial court's refusal to give his proposed lawful use of force jury instruction relieved the State of its burden of proof. Specifically, Santer argues that the trial court was required to give his proposed instruction because the lawful use of force negates an element of first degree robbery and, thus, the State was required to prove beyond a reasonable doubt the absence of lawful use of force to convict him of the crime. We disagree.

“In general, a trial court must instruct on a party’s theory of the case if the law and the evidence support it; the failure to do so is reversible error.” *State v. Otis*, 151 Wn. App. 572, 578, 213 P.3d 613 (2009). A defendant is not entitled to a jury instruction that inaccurately represents the law. *State v. Staley*, 123 Wn.2d 794, 803, 872 P.2d 502 (1994). Our standard of review from a trial court’s jury instruction ruling depends on the reason underlying the trial court’s decision. *State v. Walker*, 136 Wn.2d 767, 771, 966 P.2d 883 (1998). Where, as here, a trial court refuses to give a proposed jury instruction based on a ruling of law, our review is de novo. *Walker*, 136 Wn.2d at 772.

In criminal prosecutions, due process requires the State to disprove “a defense that necessarily negates an element of the charged offense.” *State v. W.R.*, 181 Wn.2d 757, 764, 336 P.3d 1134 (2014) (citing *Smith v. United States*, 568 U.S. 106, 110, 133 S. Ct. 714, 719, 184 L. Ed. 2d 570 (2013)).

The State is foreclosed from shifting the burden of proof to the defendant only “when an affirmative defense *does* negate an element of the crime.” Where instead it “excuse[s] conduct that would otherwise be punishable,” but “does not controvert any of the elements of the offense itself,” the Government has no constitutional duty to overcome the defense beyond a reasonable doubt.

Smith, 568 U.S. at 110 (alteration in original) (quoting *Martin v. Ohio*, 480 U.S. 228, 237, 107 S. Ct. 1098, 94 L. Ed. 2d 267 (1987) (Powell, J., dissenting); *Dixon v. United States*, 548 U.S. 1, 6, 126 S. Ct. 2437, 165 L. Ed. 2d 299 (2006)).

RCW 9A.56.190 defines robbery in relevant part as follows:

A person commits robbery when he or she unlawfully takes personal property from the person of another or in his or her presence against his or her will by the use or threatened use of immediate force, violence, or fear of injury to that person or his or her property or the person or property of anyone.

Under RCW 9A.56.200(1)(a)(iii), a person is guilty of first degree robbery if “[i]n the commission of a robbery or of immediate flight therefrom, he or she . . . [i]nflicts bodily injury.”

The lawful “use of force” statute, RCW 9A.16.020, provides in relevant part:

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

....

(3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person . . . in case the force is not more than is necessary.

In *Lewis*, we held that lawful use of force is not a defense to robbery because “[t]he crime of robbery . . . includes no element of *intent* to inflict bodily injury; rather, it includes actual infliction of bodily injury as an element.” 156 Wn. App. at 239 (citing RCW 9A.56.200(1)(a)(iii)). In other words, lawful use of force is not a defense to robbery because robbery does not require an intent to inflict bodily harm that can be negated by the lawful use of force. Santer contends that our decision in *Lewis* was incorrectly decided because we failed to consider that the crime of robbery contains the element of intent to steal. But an intent to steal is wholly unrelated to an intent to inflict bodily harm. And contrary to Santer’s argument on appeal, the lawful use of force does not “negate[] the unlawfulness of *any* act.” Br. of Appellant at 7 (emphasis added).

By its plain language the lawful use of force statute applies only to “[t]he use, attempt, or offer to use force upon or toward the person of another.” RCW 9A.16.020. And Santer cites no case law where the lawful use of force was applied to negate an element unrelated to a

defendant's use, attempt, or offer to use force.² Accordingly, the intent to steal element of robbery does not change our analysis in *Lewis*, and we adhere to our holding there that the lawful use of force is not a valid defense to robbery. 156 Wn. App. at 239.

Santer also argues that *Lewis* is distinguishable from the present case because, here, the State alleged that he acted as an accomplice in the commission of the first degree robbery.

Again, we disagree.

RCW 9A.08.020(c) provides in relevant part that a person is guilty of a crime committed by another if the person acts as an accomplice. In turn, RCW 9A.08.020(3) provides:

A person is an accomplice of another person in the commission of a crime if:

(a) With knowledge that it will promote or facilitate the commission of the crime, he or she:

(i) Solicits, commands, encourages, or requests such other person to commit it; or

(ii) Aids or agrees to aid such other person in planning or committing it; or

(b) His or her conduct is expressly declared by law to establish his or her complicity.

Under this definition, the requisite mental state required to establish accomplice liability is knowledge that the defendant's conduct will promote or facilitate the commission of the charged crime. "[A]n accomplice need not have specific knowledge of *every element* of the

² Santer's reliance on *State v. McCullum*, 98 Wn.2d 484, 495, 656 P.2d 484 (1983) to support the proposition that the lawful use of force "negates the unlawfulness of any act" is unavailing. Br. of Appellant at 7. In *McCullum*, our Supreme Court held that the State bore the burden of proving the absence of the use of lawful force in a prosecution for first degree murder because lawful use of force negates the element of premeditated intent to cause death. 98 Wn.2d at 495. The *McCullum* court's reasoning that "[t]here can be no intent to kill within the first degree murder statute unless a defendant kills 'unlawfully'" does not support Santer's claim that the lawful use of force negates the unlawfulness of *any* act because the reasoning applied only to an act involving the use of force. 98 Wn.2d at 495.

crime committed by the principal, provided he has general knowledge of that specific crime.”

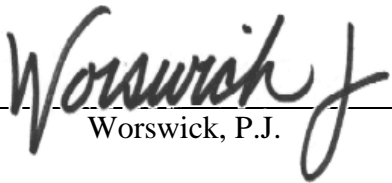
State v. Roberts, 142 Wn.2d 471, 512, 14 P.3d 713 (2000).

Santer relies on *State v. Farnsworth*, 185 Wn.2d 768, 374 P.3d 1152 (2016), to support his contention that lawful use of force negates an element of first degree robbery when committed by an accomplice. Santer’s reliance is misplaced. In *Farnsworth*, our Supreme Court noted that an accomplice to robbery must have had knowledge that his or her conduct would promote or facilitate the commission of a robbery, “including the use or threatened use of force or violence.” 185 Wn.2d at 780. In so noting, the *Farnsworth* court merely reiterated the well-established principle that, to be convicted as an accomplice, a defendant must have had general knowledge that his or her conduct would promote or facilitate the *specific crime* charged. The *Farnsworth* court did not address the infliction of bodily injury element of first degree robbery, let alone impose an additional burden on the State to prove that the principal acted with intent when inflicting such bodily injury. Accordingly, *Farnsworth* does support Santer’s claim that the trial court erred by refusing to instruct the jury on the lawful use of force.


The accomplice liability statute does not impose an additional requirement that the State prove a mental state with respect to the infliction of bodily injury element in a first degree robbery prosecution. Rather, to convict Santer as an accomplice to first degree robbery, the State was required to prove only that he (1) engaged in conduct aiding another person in planning or committing first degree robbery (2) knowing that such conduct promoted or facilitated the crime, and (3) in the commission of the robbery or of immediate flight therefrom, he or an accomplice inflicted bodily injury. RCW 9A.08.020(3)(a); RCW 9A.56.200(1)(a)(iii). Because there is no

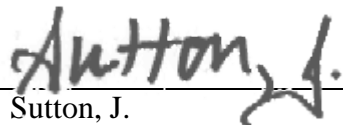
requirement that the State prove his or his accomplice's mental state with respect to the infliction of bodily injury, lawful use of force does not negate any element of first degree robbery regardless of whether the State alleged that Santer committed the crime as a principal or accomplice. Accordingly, the trial court properly denied Santer's request for a lawful use of force jury instruction, and we affirm his conviction.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


Worswick, P.J.

We concur:



Lee, J.


Sutton, J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division Two** under **Case No. 49859-6-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Date: April 12, 2018

WASHINGTON APPELLATE PROJECT

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