

COA No. 62994-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MARTIN HEALY,

Appellant.

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

The Honorable George Mattson

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2010 FEB 18 PM 4:45

REPLY BRIEF

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A. REPLY ARGUMENT

Mr. Healy has argued on appeal that the trial court's proper instruction of the defendant's jury on the affirmative defense of duress, erroneously included language regarding the "recklessness" exception to the duress defense, based on Healy's conduct involving Mattson (the person who forced him to commit the current offenses) in the past, including that of agreeing to be a police informant on Mattson. Appellant's Opening Brief, at pp. 1-2, 23-46.

In its Brief of Respondent, the State of Washington argues that the trial court included the objected-to language only in small part on the basis of the defendant's agreement to work as a police informant providing information about Mattson. Brief of Respondent, at p. 18, and pp. 8-9.

This argument is in serious error. First, the record does not support the State's contention. The cited pages 68-70 of the report of proceedings of November 24, offered by the State in support of this argument, in fact include the trial court's expression of serious doubts as to whether public policy could possibly support Mr. Healy's agreement to be an informant as "recklessness." 11/24/08RP at 68-70. In addition, these pages include the State's contention that Mr. Healy should have removed himself from the informant relationship

with the police if he concluded that it was causing him a risk of harm from Mattson, or should have worn a wire to record threats against him. But the defendant's counsel made the quite logical notation that ending the informant relationship would not have resulted in broadcasting to Mattson that Healy was no longer an informant, and thus would have had no effect on the relationship of danger that Detective Christiansen, in any event, knew he was creating between Mattson and Healy in the first place. That relationship as an informant of course carried risks for the defendant Mr. Healy - if it did not, then it would not garner the reward of "working off" a past crime.

Additionally, the State's argument that Mr. Healy could have worn a wire if he felt endangered by Mattson only serves to highlight the poor public policy that is served by the State's argument that the informant relationship may merit a recklessness caveat. The State is essentially arguing that because Mr. Healy believed it more prudent to deal with Mattson's threats without wearing a wire than be discovered doing so, he conducted himself 'badly' in the informant relationship. This is a horrendous suggestion. The State is essentially arguing that the defendant waives all right to complain of being subject to duress because of decisions he made in the highly charged and dangerous context of being an informant.

Next, the State cites pages 103 to 110 of the report of proceedings of November 24, 2008. In these pages, at page 106, the court inquires whether there is recklessness in committing a crime that requires the defendant to become an informant, in order to “work off” that offense. 11/24/08RP at 106. At pages 190-112, the trial court discusses attenuation in this context, and ultimately includes that stealing a truck (the crime sought to be “worked off”) cannot cause a person to reasonably foresee that he would be subject to duress. These determinations by the trial court support Mr. Healy’s argument on appeal.

Indeed, the court never rejected these, its own, concerns. At page 3 of the report of proceedings of November 25, 2008, which is the court’s decision, the court merely states that recklessness is an issue for the “jury” and compares the procedural posture of cases that had been reviewed and argued by counsel, concluding it is prudent to allow juries to decide the issue.

None of these cited pages support the State’s contention that the trial court ‘filtered out’ any objectionable grounds for the recklessness instruction that had to do with the argument that it was reckless to act as an informant. The court did not state that it was

giving the requested language for reasons other than the informant relationship.

In any event, the State utterly fails to respond to Mr. Healy's argument that the State primarily argued in closing that the informant relationship was the basis for the State's accusation of recklessness. This is tremendously pertinent. However the State may have slipped the argument past the trial court, the State focused in closing on the theory that if a person helps law enforcement by being an informant, he waives all right to fairly seek acquittal when the criminal turns on him in retaliation. Thus Mr. Healy was substantially hampered in his ability to fairly seek acquittal pursuant to a viable defense. As pointed out in the Opening Brief, in closing argument, the deputy prosecutor in fact very much relied on the argument that Healy's decision to become a contract informant for the Bellevue Police Department, in order to "work off" a potential criminal charge, was made in reckless disregard of a risk that he would be forced by Mattson and Cotton to participate in a crime. 11/25/08RP at 66-67.

Notably, the State also fails completely to respond to the appellant's argument that although it was perhaps foreseeable that Mattson and Cotton would assault Healy or otherwise retaliate

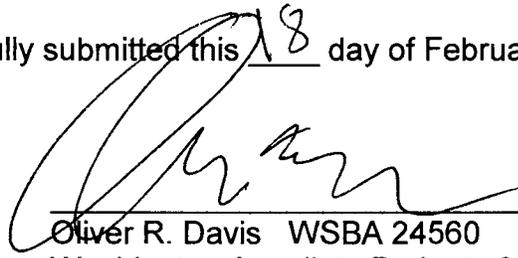
against him for being an informant, it was hardly foreseeable that they would involve him in their own further criminal activity.

Overall, although Mr. Healy had a self-interested reason for doing so - attempting to 'work off' a conviction - he was acting in a socially beneficial way by being a confidential police informant. It is not uncommon for defenses in the area of necessity to be evaluated from this standpoint. Thus the defense of duress, although it is deemed viable in cases of burglary, such as the present case, cannot be raised as a defense to most homicide charges. RCW 9A.16.060(2). The State also fails to respond to this policy concern, instead relying in its Brief on a mischaracterization of how the recklessness language was obtained, and how it was used, below.

B. CONCLUSION

Based on the foregoing, and on his Opening Brief, Mr. Healy respectfully requests that this Court reverse his judgment and sentence.

Respectfully submitted this 18 day of February, 2010.



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DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 18TH DAY OF FEBRUARY, 2010, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		

SIGNED IN SEATTLE, WASHINGTON THIS 18TH DAY OF FEBRUARY, 2010.

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