

Court of Appeals No. 36039-0-II

**COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

STATE OF WASHINGTON
Plaintiff/Respondent,
v.
LIONEL DEMETRI GEORGE,
Defendant/Appellant.

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY DENNIS

SUPPLEMENTAL BRIEF OF APPELLANT

Appeal from the Superior Court of Pierce County,
Cause No. 06-1-01123-8
The Honorable Frank E. Cuthbertson, Presiding Judge

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I. ARGUMENT RE: JURY INSTRUCTION 9

On February 20, 2008, this court ordered the appellants to submit additional briefing in response to Mr. Wahsise's Statement of Additional Grounds for Review. In his Statement of Additional Grounds, Mr. Wahsise argues that Jury Instruction Number 9 misstated the law of accomplice liability and relieved that State of its burden that Mr. Wahsise had knowledge that he was an accomplice to the specific crime of first degree robbery.

In support of his argument, Mr. Wahsise cites *State v. Roberts*, 142 Wn.2d 471, 14 P.3d 713 (2000). In *Roberts*, the court held that an accomplice liability instruction which indicated that a defendant could be found guilty when aware that his conduct furthered "a" crime rather than "the crime," or the specifically charged offense, was an incorrect statement of the law of accomplice liability in Washington and improper. *Roberts*, 142 Wn.2d at 509-513, 14 P.3d 713. See also *State v. Cronin*, 142 Wash.2d 568, 579, 14 P.3d 752 (2000) ("the fact that a purported accomplice knows that the principal intends to commit "'a crime'" does not necessarily mean that accomplice liability attaches for any and all offenses ultimately committed by the principal. See *Roberts*, 14 P.3d at 736. In our judgment, in order 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. Because the jury instruction which was given in [Cronin's] trial[] permitted the jury to find accomplice liability on an incorrect legal basis, [it was] legally deficient." (emphasis in original).

In response to *Cronin* and *Roberts*, the Washington Pattern Jury Instruction on accomplice liability was modified to read, in pertinent part, "A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either..." WPIC 10.51. In *State v. Moran*, 119 Wn.App. 197, 81 P.3d 122 (2003), *review denied* 151 Wn.2d 1032, 95 P.3d 351 (2004), the court specifically approved of this language and held that it was an accurate statement of the law on accomplice liability. *Moran*, 119 Wn.App at 209-210, 81 P.3d 122.

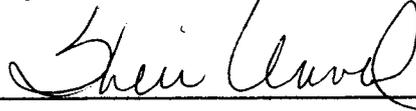
In this case, jury instruction number 9, the accomplice liability instruction, matches WPIC 10.51 exactly. Therefore, Mr. Wahsise's claim that the instruction misstated the law of accomplice liability lacks merit.

II. CONCLUSION

For the reasons stated above, no further briefing by Mr. George's appellate counsel will be submitted on this issue.

DATED this 3rd day of March, 2008.

Respectfully submitted,

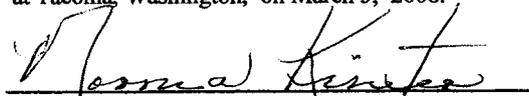


Sheri Arnold, WSBA No. 18760

Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies that on March 3, 2008, I delivered in person to the Pierce County Prosecutor's Office, County-City Building, 930 Tacoma Ave. S., Tacoma, WA. 98402, and by U. S. Mail to: appellant, Lionel D. George, DOC # 975696, Washington State Penitentiary, 1313 North 13th Street, Walla Walla, Washington. 99362-1065, and Dana M. Lind, Eric J. Nielsen, Nielsen Broman & Koch PLLC, 1908 East Madison Street, Seattle, Washington 98122-2482, true and correct copies of this Supplemental Brief. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on March 3, 2008.


Norma Kinter

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II**

STATE OF WASHINGTON)

Respondent,)

vs.)

BRIAN WAHSISE,)

Appellant.)

COA NO. 36039-0-II

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 20TH DAY OF MARCH 2008, I CAUSED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

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PATRICK MAYOVSKY