

No. 49859-6-II

THE COURT OF APPEALS 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

REPLY BRIEF OF APPELLANT

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A. 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).

Although Mr. Santer discusses *Farnsworth* at length in his opening brief the State chooses to simply ignore it. Instead, the State relies on unpublished cases which address different legal issues to insist the lawful use of force cannot negate an accomplice's alleged knowledge that he is knowingly assisting in the taking of property by force. Brief of Respondent at 6-7. Neither of the unpublished cases addresses accomplice liability and the requisite proof of knowledge. As set forth in Mr. Santer's initial brief, 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*.

Additionally, robbery requires the state prove the person acted with the intent to steal and that he used force or the threatened use of force for that purpose. *State v. Ralph*, 175 Wn. App. 814, 824, 308 P.3d 729 (2013). Those elements cannot coexist with a person's belief, mistaken or otherwise, that he is acting in defense of another.

The State's contention 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 State’s claim, 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 court erred and relieved the State of its burden of proof in refusing to instruct the jury on lawful force.

B. CONCLUSION

For the reasons above and set forth in Mr. Santer's prior brief this Court should reverse Mr. Santer's conviction.

Respectfully submitted this 17th day of October, 2017.



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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 49859-6-II
v.)	
)	
RONLEY SANTER,)	
)	
Appellant.)	

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