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Court of Appeals
Division II
State of Washington
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NO. 51735-5-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

SAMMY WEAVER,

Appellant.

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

SUPPLEMENTAL BRIEF OF APPELLANT

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A. INTRODUCTION

Sammy Weaver was being pursued by an armed party-goer when he ran to his friends' apartment for safety. His friends were not there, but the door was unlocked. Believing his friends would be home imminently and would have given him permission to be there, Mr. Weaver entered the residence. Unfortunately, Mr. Weaver's friends no longer resided at the apartment and Mr. Weaver was arrested inside the home the following morning. A jury convicted him of criminal trespass in the first degree. Contrary to the statutory language, however, the jury was instructed that Mr. Weaver was not required to know his actions were unlawful to convict him of the trespass. The erroneous instructions relieved the State of its burden to prove each element beyond a reasonable doubt, requiring reversal and remand for a new trial.

B. SUPPLEMENTAL ASSIGNMENTSOF ERROR

The jury instructions were contradictory and relieved the State of its burden to prove each element of the offense beyond a reasonable doubt.

C. ISSUE PERTAINING TO ASSIGMENT OF ERROR

Jury instructions must make the applicable legal standard "manifestly apparent to the average juror." Instructions that relieve the State of its burden to prove an element of the offense are presumed to be prejudicial, warranting reversal. Did instructing the jury that it was not

necessary that Mr. Weaver knew entry was unlawful conflict with the to-convict instruction requiring knowledge and relieve the State of its burden to prove every element of the offense beyond a reasonable doubt?

D. SUPPLEMENTAL STATEMENT OF THE CASE

In the early hours of August 19, 2017, Mr. Weaver left his friend's home near Byerly Drive to go to a neighboring house party. 98, 102. Mr. Weaver's motorcycle was recently stolen, and he heard that the person who took it was at the party. RP 98. When Mr. Weaver retrieved his motorcycle, the individual pursued him with a firearm. RP 99. Mr. Weaver attempted to call law enforcement for aid, but realized his phone was dead. RP 99. He is familiar with several people in the neighborhood and ran to the home of his friends, Phillip Sr. and Phillip Jr., not knowing they no longer lived there. RP 99. When he got there, he saw that the home was being remodeled, but believed that his friends still lived there and would return soon. RP 102. The door was open, so Mr. Weaver went in and plugged in his phone, locking the door behind him. RP 101-02. He eventually fell asleep and awoke to law enforcement knocking and entering the home. RP 102.

The State charged Mr. Weaver with residential burglary. CP 6. At trial, Mr. Weaver acknowledged that he did not receive permission in advance of entering the home and that he had not spoken with his friends

in nine months to a year. RP 106-07, 109. He was emphatic, however, that, at the time he entered, he believed his friends still lived there, he previously spent time in the home, and his friends would have allowed him to enter. RP 101, 106-07. He stated that he would not have gone in if he knew they no longer resided in the home. RP 104.

Although defense counsel did not propose jury instructions, the court instructed the jury on the lesser-included offense of criminal trespass in the first degree. RP 6-7. Specifically, Jury Instruction No. 13 provided that,

> To convict the defendant of the crime of criminal trespass in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about August 19, 2017, the defendant knowingly entered or remained in a building;
>
> (2) **That the defendant knew that the entry or remaining was unlawful**; and
>
> (3) That this act occurred in the State of Washington.

CP 47 (emphasis added). Instruction No. 14 supplemented the to-convict instruction, defining "knowingly" as,

> A person knows or acts knowingly or with knowledge with respect to a fact, circumstance, or, result when he is aware of that fact, circumstance, or result. **It is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful or an element of a crime**.

> If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.

CP 48 (emphasis added). The jury later acquitted Mr. Weaver of the residential burglary but convicted him of first degree criminal trespass. CP 51-52.

E. ARGUMENT

Jury Instructions No. 13 and 14 are contradictory and relieved the State of its burden to prove Mr. Weaver knew the entry was unlawful.

Read as a whole, the jury instructions in this case are contradictory, utterly confusing, and relieved the State of its burden to prove that Mr. Weaver knew his entry was unlawful beyond a reasonable doubt.

Jury instructions "must make the relevant legal standard manifestly apparent to the average juror." *State v. Smith*, 174 Wn. App. 359, 369, 298 P.3d 785 (2013) (quoting *State v. Kyllo*, 166 Wn.2d 856, 864, 215 P.3d 177 (2009)). Clarity is critical as jurors are not presumed to be legal experts and rely entirely on the plain language in the instructions to apply the law. Jury instructions must be read as a whole, and the jury is to presume that each instruction has meaning. *State v. McLoyd*, 87 Wn. App. 66, 71, 87 P.2d 1255 (1997) (internal citations omitted). "If the jury

instructions read as a whole are [] ambiguous, the reviewing court cannot conclude that the jury followed the constitutional rather than the unconstitutional interpretation." *Id.* (citing *Sandstrom v. Montana*, 442 U.S. 510, 526, 99 S. Ct. 2450, 61 L. Ed. 2d 39 (1979)).

Beyond creating ambiguity, the jury instructions in Mr. Weaver's case are completely opposing.[1] Jury Instruction No. 13 – the "to convict" instruction – requires the jury to find beyond a reasonable doubt that "**the defendant knew that the entry or remaining was unlawful**." CP 47. This is followed immediately by Instruction No. 14, informing the jury that "**[i]t is not necessary that the person know that the fact, circumstance, or result is defined by law as being unlawful[.]**" CP 48. There is no way to reconcile these two instructions. The State was required to prove beyond a reasonable doubt that Mr. Weaver knew his entry was unlawful; Instruction No. 14 clearly told the jury this knowledge wasn't truly necessary.

That both instructions were adopted verbatim from the Washington Patter Jury Instructions (WPIC) does not render them immune from challenge. WPIC 60.16 (Criminal Trespass – First Degree – Elements);

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[1] Jury instructions that can be construed as relieving the State of its burden to prove each element beyond a reasonable doubt constitute manifest error of constitutional magnitude and may be raised for the first time on appeal under RAP 2.5(a)(3). *State v. Israel*, 113 Wn. App. 243, 265 n. 2, 54 P.3d 1218 (2002) (citing *State v. Stein*, 144 Wn.2d 236, 241, 27 P.3d 184 (2001)).

WPIC 10.02 (Knowledge – Knowingly – Definition). WPICs are not the law. *State v. Hayward*, 152 Wn. App. 632, 654, 217 P.3d 354 (2009) (citing *State v. Mills*, 116 Wn. App. 106, 116 n. 24, 64 P.3d 1253, *rev'd on other grounds by* 154 Wn.2d 1, 109 P.3d 415 (2005)). "Where a WPIC is in conflict with the applicable statute, the jury instruction must follow the statutory language." *Hayward*, 152 Wn. App. at 646. Instructions that mirror the WPICs may still relieve the State of its burden of proof. *See State v. Goble*, 131 Wn. App. 194, 203-04, 126 P.3d 831 (2005).

Regardless, this Court need not take issue with the WPICs to find that the instruction was erroneous in Mr. Weaver's case. While WPIC 60.16 suggests using WPIC 10.02 to define "knowledge," the language at issue in Mr. Weaver's case is bracketed within the model instruction. 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 10.02 (4th Ed. 2016). The note on use states that bracketed material only should be used as applicable. The comment to the WPIC further explains the purpose of the bracketed language to state the rule that ignorance of the law is no excuse:

> The committee believes that this sentence will assist the jury in understanding that the defendant must have knowledge of the facts, circumstances, or results that constitute a crime, rather than knowledge that the facts, circumstances, and results are a crime.

(citations omitted). Criminal trespass, however, is unique inasmuch as it *does require* an individual to know that the fact of their presence is unlawful, i.e. a crime. Simply put, the bracketed portion of the instruction is not only inapplicable to the statutory definition of criminal trespass, but also explicitly relieves the State of its burden to prove knowledge.

This constitutional error was prejudicial in Mr. Weaver's case. Constitutional errors are presumed prejudicial, and the State bears the burden of proving that the error was harmless beyond a reasonable doubt. *Hayward*, 152 Wn. App. at 647 (2009); *see also Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967) ("Before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt."). Where an error involves "omissions or misstatements of elements in jury instructions, 'the error is harmless if that element is supported by uncontroverted evidence.'" *Hayward*, 152 Wn. App. at 646-47 (quoting *State v. Thomas*, 150 Wn.2d 821, 845, 83 P.3d 970 (2004)). The evidence in this case was conflicting. Mr. Weaver put forth evidence that he believed his friends still resided in the home and would have allowed him to enter. He was able to provide the names of his friends and noted that he visited the home in the past. RP 101, 110. The jury acquitted Mr. Weaver of the residential burglary, suggesting they found him credible, at least in part. While some

of Mr. Weaver's testimony conflicted with that of other witnesses, other portions were corroborated.

Mr. Weaver acknowledged being in the home, and the State established the incident occurred in Washington. Thus, the only contested issue was whether Mr. Weaver believed he was there lawfully; the State cannot show that the instructional error as to that very issue was harmless. This Court should reverse and remand for a new trial.

F. CONCLUSION

For the above stated reasons, this Court should reverse Mr. Weaver's conviction for Criminal Trespass in the First Degree, and remand for a new trial.

DATED this 14th day of February, 2019.

Respectfully submitted,

s/Devon Knowles

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DIVISION TWO

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	)	
Respondent,	)	
	)	NO. 51734-5-II
v.	)	
	)	
SAMMY WEAVER,	)	
	)	
Appellant.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 14TH DAY OF FEBRUARY, 2019, I CAUSED THE ORIGINAL **SUPPLEMENTAL 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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SIGNED IN SEATTLE, WASHINGTON THIS 14TH DAY OF FEBRUARY, 2019.

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