

FILED
JAN 19, 2016
Court of Appeals
Division III
State of Washington

NO. 32228-9-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

DANIEL CHRISTOPHER LAZCANO,

Defendant/Appellant.

CORRECTED REPLY BRIEF OF APPELLANT,

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ARGUMENT

The State misinterprets accomplice liability when it argues in its brief that general knowledge of a co-participant's intent to commit a crime is sufficient to establish liability. The crime at issue is first degree burglary.

RCW 9A.52.020 (1) states:

A person is guilty of burglary in the first degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building and if, in entering while in the building or in immediate flight therefrom, the actor or another participant in the crime (a) is armed with a deadly weapon, or (b) assaults any person.

The State claims that Mr. Lazcano had “knowledge that entry into the home by Frank [Lazcano] was uninvited and going to contain violence and that Daniel [Lazcano] intended for violence to occur.” (Respondent's Brief at 21.)

Daniel Lazcano was outside in the alley to the rear of the residence. He had no idea what was occurring at the front door. He did not know if his brother Frank would be invited in or otherwise.

In essence, the State is arguing constructive knowledge. As the Court noted in *State v. Allen*, 182 Wn.2d 364, 374 (2015);

Although subtle, the distinction between finding actual knowledge through circumstantial evidence and finding knowledge because the defendant “should have known” is critical. We have recognized that a juror could understandable misinterpret Washington’s Culpability Statute to allow a finding of knowledge “if an ordinary person in the defendant’s situation would have known” the fact in question, or in other words, if the defendant “should have known.” *Shipp* [*State v. Shipp*, 93 Wn.2d 510, 610 P.2d 1322 (1980)] at 514. However, such an interpretation subjects a defendant to accomplice liability under a theory of constructive knowledge and is unconstitutional. *Id.* at 515-16. The past constitutional muster, the jury must find actual knowledge but may make such a finding with circumstantial evidence. *Id.* at 516.

The State’s argument is based upon constructive knowledge as opposed to actual knowledge. The Lazcano brothers went to the residence to confront Marcus Shur. Daniel Lazcano could not know whether the confrontation would occur inside or outside the residence. He was behind the house and could not observe what was occurring at the front of the house. He was totally unaware of any assaultive behavior by his brother toward anyone inside the house.

There was no intent to commit the offense of first degree burglary.

There was an intent to confront and potentially assault Marcus Shur.

The State's underlying theory as to the felony murder alternative is flawed. The evidence was insufficient to support that alternative.

Mr. Lazcano otherwise relies upon the argument contained in his original brief with regard to all of the remaining issues.

Dated this 19th day of January, 2016.

Respectfully submitted,

s/ Dennis W. Morgan

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NO. 32228-9-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	WHITMAN COUNTY
Plaintiff,)	NO. 12 1 00051 9
Respondent,)	
)	
v.)	CERTIFICATE OF
)	SERVICE
DANIEL CHRISTOPHER)	
LAZCANO,)	
)	
Defendant,)	
Appellant.)	
)	

I certify under penalty of perjury under the laws of the State of Washington that on this 19th day of January, 2016, I caused a true and corrected copy of *Reply Brief of Appellant* to be served on:

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