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Court of Appeals
Division III
State of Washington

NO. 33910-6-III (Consolidated w/33932-7-III)

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

JOHN W. JENNINGS,

Defendant/Appellant.

REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES	ii
STATUTES	ii
OTHER AUTHORITIES	ii
ARGUMENT	1

TABLE OF AUTHORITIES

CASES

In re Welfare of Wilson, 91 Wn.2d 487, 588 P.2d 1161 (1979) 5

State v. Baylor, 17 Wn. App. 616, 565 P.2d 99 (1977) 3

State v. Boast, 87 Wn.2d 447, 553 P.2d 1322 (1976)..... 4

State v. Everybositalksabout, 145 Wn.2d 456, 39 P.3d 294 (2002)..... 5

State v. Redden, 71 Wn.2d 147, 426 P.2d 854 (1967) 3

STATUTES

RCW 9.41.080 1

OTHER AUTHORITIES

RPC 1.9, COMMENT [9] 5

ARGUMENT

UNLAWFUL DELIVERY OF A FIREARM

The State fails to address the statutory language of RCW 9.41.080. The phrase “reasonable cause to believe” is ignored by the State in its argument.

Rather, the State again relies upon speculation in support of its argument. The State’s reasoning is

at the time of Adam Jennings’ disqualifying conviction, he lived with John Jennings. John Jennings is also Adam Jennings’ father. On those facts alone, any rational trier of fact could conclude that John Jennings had a reasonable basis to know that his son, who lived with him at the time, had been convicted of the offense.

As argued in his original brief, the foregoing statement by the State is the only evidence presented to the jury concerning John Jennings’ **knowledge** of the nature of his son’s prior conviction – if any such knowledge existed.

Mr. Jennings otherwise relies upon the argument contained in his original brief as to the sufficiency of the evidence on Count II – unlawful delivery of a firearm.

ACCOMPLICE LIABILITY

The State essentially relies upon a statement made two days prior to Michael Carrington being shot. The statement was made by John Jennings in the presence of his son and Bonnie Scott. The statement was “if any hunters come on my property we’ll shoot them.”

People make threatening statements all the time. Whether or not they follow through on their statements is another fact altogether.

As the State recognizes in its brief:

The evidence in this case was sufficient for a rational trier of fact to find Adams Jennings guilty as the principal. The fatal shots were fired from the window in the room belonging to Adam Jennings. Targets had been set up around the residence in a manner that Adam Jennings would be firing shots from his bedroom window, in the same direction as the fatal shots killing Mr. Carrington. Adam Jennings had binoculars, a gun rack, firearms, a speed loader, and ammunition setup around the window as preparation for firing at any hunters that came on the property. The bullet fragment found in Mr. Carrington’s body was consistent with a CCI Stinger which matched ammunition found in Adam Jennings room. Adam Jennings had unrestricted access to multiple .22 caliber firearms. Adam Jennings’ window had markings on the lower sill consistent with a firearm rubbing on the sill.

(State’s Brief, pp 13-14.)

The State goes on to rely upon two cases which are factually distinguishable from the Jennings case.

In *State v. Redden*, 71 Wn.2d 147, 426 P.2d 854 (1967) four individuals entered a café in Pierce County to rob the owner. When the actual robbery occurred only two individuals were in the café. The other two individuals were waiting in a car outside. Police were able to arrest the suspects within eight miles of the café. They recovered the money taken from the café. The defendant had \$85.00 on his person. There was more than sufficient evidence that an agreement had been reached between the four individuals to commit the robbery.

The other case upon which the State relies, *State v. Baylor*, 17 Wn. App. 616, 565 P.2d 99 (1977) also involved a robbery. This robbery occurred in a parking lot behind a tavern. One individual actually knocked down the victim and took his wallet. The other individual told the victim “not to make a fight or you’re going to get blown away.” In fleeing from the scene, the defendants were involved in a motor vehicle accident. Police arrived and the victim claimed that they were the individuals who had robbed him. The victim’s money was found in the defendant’s pocket.

As can be noted, there was eyewitness identification by others, in both cases, who observed the defendant’s actual involvement in the offenses. No such observation occurred in John Jennings’ case.

There is no aiding and abetting unless one associates himself with the venture and participates in it as something he wishes to bring about, and by **action to make it succeed**. *State v. Gladstone*, 78 Wn.2d 306, 311, 474 P.2d 274, 42 A.L.A. 3d 1061 (1970). It must be shown that the aider shared in the criminal intent of the principal and **there must be a community of unlawful purpose at the time the act is committed**.

State v. Boast, 87 Wn.2d 447, 456, 553 P.2d 1322 (1976) (Emphasis supplied).

There was no evidence presented that John Jennings took any action on the date when Michael Carrington was killed.

There was no evidence presented of a community of unlawful purpose at the time of Mr. Carrington's death.

There was no evidence presented that Mr. Jennings was aware of what Adam Jennings was doing in his bedroom.

Mr. Jennings heard two loud shots comparable to a shotgun (Michael Carrington's shots). He then heard two other shots that were closer to the house (Adam Jennings' shots).

There is no evidence that Mr. Jennings observed any shots being fired at Mr. Carrington.

Under the accomplice liability statute, RCW 9A.08.020, "A person is not an accomplice unless [that person] knowingly 'solicits, commands, encourages, or requests' the

commission of a crime, or aids in the planning or commission [of the crime]. ... [P]hysical presence and assent alone are insufficient to constitute aiding and abetting.... [S]omething more than presence alone plus knowledge of ongoing activity must be shown to establish the intent requisite to finding [an accused] to be an accomplice.

State v. Everybodytalksabout, 145 Wn.2d 456, 472, 39 P.3d 294 (2002), quoting *In re Welfare of Wilson*, 91 Wn.2d 487, 491-92, 588 P.2d 1161 (1979).

Mr. Jennings was present inside the cabin when the shots were fired at Mr. Carrington. This, along with his statement two days prior to the shooting, does not constitute sufficient evidence of accomplice liability.

Mr. Jennings otherwise relies upon the argument concerning accomplice liability contained in his original brief.

CONFLICT OF INTEREST

Mr. Jennings supplements the argument contained in his original brief with the following addition:

The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under (a) and (b).

RPC 1.9, Comment [9]

Michael Prince was a partner in the law firm of McDougall and Prince in 2013 when that firm was appointed to represent Adam Jennings. Mr. Prince had previously represented Adam Jennings in Okanogan County District Court on the offense of driving while license suspended 3rd degree.

Attorney Prince acknowledged to the trial court that he had some involvement with the representation of Adam Jennings before he appeared on behalf of John Jennings. No informed consent was obtained from either of the Jennings'.

DATED this 1st day of November, 2017.

Respectfully submitted,

s/ Dennis W. Morgan

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COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	OKANOGAN COUNTY
Plaintiff,)	NO. 13 1 00395 1
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
JOHN W. JENNINGS,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 1st day of November, 2017, I caused a true and correct copy of the *REPLY BRIEF* and to be served on:

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