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SUPREME COURT
STATE OF WASHINGTON
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No. 88559-1

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

DOUGLAS L. BAUER

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER

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WSB #16550

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 ORIGINAL

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I. STATEMENT OF THE CASE

Appellant adopts the facts as previously stated in the prior briefs by reference.

II. ARGUMENT

A. THIRD DEGREE ASSAULT CANNOT BE COMMITTED BY AN ACCOMPLICE UNLESS THE REQUIREMENTS OF RCW 9A.08.020 ARE SATISFIED.

The state has consistently argued that it is not relying on RCW 9A.08.020 as a basis for imposing liability in this case. Indeed, a review of the statute indicates conclusively that there is no basis for imposing liability.¹ In spite of this, it continues to press the position that Mr. Bauer is directly responsible for the assault based in negligence independent of the actual incident. The absurdity, of course, is that without the conduct of T.G.J.C., there is no assault, simply because the accidental shooting would not exist. Thus, despite its stated position, T.G.J.C. is the principle to the act.

In addition to the prior arguments submitted to this Court, under no stretch of the imagination can Mr. Bauer be considered an accomplice to the assault based in negligence. As this Court has stated previously:

One does not aid and abet unless, in some way, he associates himself with the undertaking, participates in it as

¹ In dictum, the majority suggests that an instruction under this statute may be appropriate. However, the state acknowledges that there is no evidence to support an instruction under this statute. Moreover, the issue was not briefed and T.G.J.C. pleaded guilty in juvenile court. Given that he would need to have been found competent to answer the charges filed against him, he was neither innocent, nor irresponsible. Nor was Mr. Bauer in any relationship with T.G.J.C. that would make him legally accountable for his actions. Thus, it is difficult to surmise why the majority would include any language in its opinion suggesting an instruction would be appropriate under RCW 9A.08.020.

in something he desires to bring about, and seeks by his action to make it succeed.

In the Matter of the Welfare of Ronald E. Wilson, 91 Wn.2d 487, 491-92, 588

P.2d 1161 (1979) (citations omitted). He must both encourage and intend to have the principle engage in criminal conduct before he may be found criminally liable.

Id. Neither prong is present here—the charge is based in negligence, which, by its nature, is not something one encourages or intends to have another engage in.

In other words, before one can be found guilty of the charge as an aider and abettor, the crime must be based on an intentional act.

If one were to adopt the state's reasoning, an individual would be guilty of vehicular homicide if a visitor stole car keys and then the car from one's house and killed someone with the car. Or stole alcohol from one's liquor cabinet/ refrigerator and caused the same result after becoming intoxicated, all without the knowledge of the car/home owner. The law has never sanctioned such a result and this Court should not sanction it here.

Interestingly, the entire premise of the Court of Appeals' decision in suggesting that Mr. Bauer may be found liable for the assault is based on the erroneous statement that T.G.J.C. is an irresponsible person. State v. Bauer, 174 Wn.App. 59, 72, 295 P.3d 1227 (2013). However, as previously noted, he is not—he pled guilty in Juvenile Court acknowledging his responsibility for his actions and could only do so if he was found to be competent. Thus, even if relevant, the Juvenile Court already has found him responsible and the entire foundation for the Court of Appeals decision crumbles.

Moreover, the decision completely ignores the principles of statutory construction as set forth by this Court. See State v. Jackson, 137 Wn.2d 712, 729, 976 P.2d 1229 (1999). In finding that RCW 9A.42.010(1) did not act to protect one's child from assault, this Court stated:

“In construing statutory language, the words must be given their usual, ordinary, commonly accepted and full meaning.” In our view, the Court of Appeals properly relied on Webster’s Third New International Dictionary to determine that the most common meaning of the term “shelter” is “something that affords protection from the elements.” See State v. Belgarde, 119 Wn.2d 711, 716, 837 P.2d 599 (1992) (holding that “when a statutory term is undefined, dictionaries may be consulted to determine its meaning”).

The Court of Appeals’ determination as to the meaning of “shelter” is further buttressed by the doctrine of *noscitur a sociis*. Under this doctrine, “the meaning of words may be indicated or controlled by those with which they are associated.” Ball v. Stokely Foods, Inc., 37 Wn.2d 79, 221 P.2d 823 (1950). Further, under that doctrine “it is . . . familiar policy in the construction of terms of a statute to take into consideration the meaning naturally attaching to them from the context, and to adopt the sense of the words which best harmonizes with the context.” McDermott v. Kaczmarek, 2 Wn.App. 643, 648, 469 P.2d 191 (1970). We agree with the Court of Appeals that when one looks at the term “shelter” in light of the words surrounding it in RCW 9A.42.010(1) (i.e., “food, water . . . clothing, and medically necessary health care”) it is clear that the Legislature did not mean for it to encompass the protection of a child from the criminal act of a third person. Rather, it was referring to a parent’s duty to take affirmative acts to provide the basic necessities of life for his or her children.

Jackson, 137 Wn.2d at 729. The same principles apply here. Yet, the Court of Appeals simply ignored these long standing principles of statutory construction, legislative intent and constitutional prohibitions in affirming the trial court.

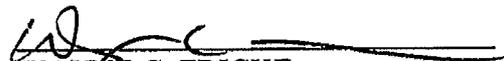
Not only did the appellate court ignore the above principles, but it completely ignored the Rule of Lenity, which requires that the courts adopt the interpretation most favorable to the defendant. Id. Thus, this Court should reverse.

III. CONCLUSION

Based on the above argument, as well as those previously submitted, Mr. Bauer requests that the court reverse the Court of Appeals and remand with directions to dismiss this action.

RESPECTFULLY SUBMITTED this 27 day of July, 2013.

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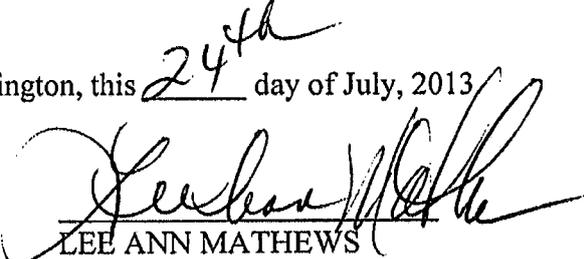
CERTIFICATE OF SERVICE

Lee Ann Mathews, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set out below, I delivered true and correct copies of the supplemental brief of petitioner to which this certificate is attached, by United States Mail or ABC-Legal Messengers, Inc., to the following:

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Doug Bauer
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Signed at Tacoma, Washington, this 24th day of July, 2013


LEE ANN MATHEWS

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Attached please find for filing the Supplemental Brief of Petitioner.

Thank you.

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