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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
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S. Ct. No. 91564-4
COA No. 31936-9-III

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

WILLIAM LEE FULTZ, Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner William Lee Fultz asks this Court to accept review of the Court of Appeals' decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Petitioner seeks review of the unpublished decision of the Court of Appeals, filed March 10, 2015. A copy of the decision is in the Appendix at pages A-1 through A-8.

C. ISSUE PRESENTED FOR REVIEW

1. Was the evidence insufficient to support the convictions when the State failed to prove beyond a reasonable doubt that Mr. Fultz was an accomplice?

D. STATEMENT OF THE CASE

Mr. Fultz was charged by amended information with count 1, first degree burglary with a deadly weapon enhancement; count 2, first degree robbery with a deadly weapon enhancement; count 3, second degree assault against Nicholas Knight with a deadly weapon enhancement; and count 4, second degree assault against Michael Mendoza with a deadly weapon enhancement. (CP 144). The case proceeded to jury trial.

Tamara Knight lived in a Deer Park trailer with her son, Nicholas Knight, and a friend, Carrie. (8/27/13 RP 52). Two other kids, Michael Mendoza and Tanner, also lived there. (*Id.*). Ms. Knight wanted to sell her Ford Bronco so she could pay the rent. (*Id.* at 53). A lady, Donna, wanted the vehicle and put down \$140 on the \$500 selling price. (*Id.* at 53-54). Jason Koch was with her. (*Id.* at 54). The Bronco had a problem with its battery. (*Id.*). When Donna did not come back and pay the rest of the money, Ms. Knight sold the Bronco to someone else. (*Id.*).

A very angry Donna came by the trailer with two men, Mr. Koch and Mr. Fultz, and another woman about 11 p.m. on April 4, 2013. (8/27/13 RP 55-56, 77). Ms. Knight gave the \$140 back to Donna, who accidentally ripped the bills in half when she grabbed them out of her hand. (*Id.* at 57, 65). Still mad, she left. (*Id.*). Ms. Knight had not previously known her. Donna turned around and told Mr. Fultz to take care of the problem. (*Id.* at 65).

Three men showed up later at the trailer around 3 a.m. on April 5, 2013. (8/27/13 RP 57, 87). Mr. Koch, wearing a hooded jacket, came to the front door and opened it while Ms. Knight was standing there. (*Id.* at 58, 67). He pulled her out the door. (*Id.*).

One of the three men, Robert Moody, had a baseball bat. (8/28/13 RP 151). Ms. Knight saw Nicholas fighting with Mr. Fultz. (*Id.* at 59). Her friend called 911. (*Id.*). The three guys left in a white Yukon-type vehicle. (*Id.* at 60). Ms. Knight saw a woman inside whom she had not seen before. (*Id.* at 67).

Law enforcement arrived and Ms. Knight told them what happened. (8/27/13 RP 60). A PlayStation was missing from the trailer. (*Id.*). She did not see Mr. Fultz or anyone else use the baseball bat. (*Id.* at 62, 74).

Mr. Knight said Donna, Mr. Koch, and Mr. Fultz showed up at the trailer around 11 p.m. on April 4, 2013. (8/27/13 RP 77). They came to get the money back for the Bronco that had been sold to someone else. (*Id.* at 78). Donna was very angry. (*Id.*). He also heard her tell Mr. Fultz to take care of the problem. (*Id.* at 79). The men came back at 3 a.m. (*Id.*). Mr. Knight had just put a movie into his PlayStation so he could lie down and watch and go to sleep. (*Id.*). Mr. Mendoza looked out the window; Mr. Knight saw a white Suburban at the end of the street. (*Id.*). He heard a knock at the door. (*Id.* at 80).

Mr. Knight attacked Mr. Fultz before “we got attacked.”

(8/27/13 RP 80). He knew he was getting into a fight. (*Id.*). Mr. Knight got hit in the head from behind as he began wrestling with Mr. Fultz. (*Id.*). He had Mr. Fultz in a headlock and Ms. Knight attacked him and ripped the shirt off his back. (*Id.* at 81). Mr. Fultz got free. (*Id.*). The Suburban drove past the house. (*Id.*). The PlayStation was gone. (*Id.*).

Deputy Damon Anderberg responded to the trailer on a “trouble unknown” call in Deer Park. (8/27/13 RP 87). He talked to the trailer’s residents and got information on the Suburban. (*Id.* at 88). Its description was put out to WSP. (*Id.*). Ms. Knight was agitated and upset as were Mr. Knight, who had abrasions, and Mr. Mendoza, who had been hit and bruised by a bat to the back of his leg. (*Id.* at 88-89, 106). A WSP trooper stopped the Suburban at Highway 395 and Hastings. The PlayStation was recovered. (*Id.* at 96-97).

Trooper Robert Spencer was just going off duty about 4 a.m. on April 5, 2013, and was looking for the white Suburban. (8/27/13 RP 112, 114). He spotted the vehicle going southbound and called for backup. (*Id.* at 115). Another trooper helped out on the traffic stop. (*Id.*). Three males and a female were in the Suburban. (*Id.*).

The men were identified as Robert Moody, Jason Koch, and William Fultz. (*Id.* at 116). Mr. Moody was the driver with Mr. Koch and Mr. Fultz in the back. The woman, Lianne Courtney, was on the right front passenger side. (*Id.* at 118, 125). A baseball bat was in the vehicle. (*Id.* at 118, 125-26).

Deputy Ryan Truman responded to a burglary in progress call in Deer Park the early morning of April 5, 2013. (8/27/13 RP 121-23). Mr. Knight was not wearing a shirt and had visible injuries. (*Id.* at 123). At the traffic stop, the deputy gave Mr. Fultz his rights. (*Id.* at 130). He agreed to talk and said he went with Jason to get his battery back and they were assaulted. (*Id.*). Mr. Fultz told the deputy he was hit in the back of the head with a 2x4 and had his shirt nearly ripped off while being held on the ground. (*Id.* at 131). He did not know anything about the PlayStation. (*Id.*). Mr. Fultz did not go into the home. (*Id.*). The door was open, four guys came out, and beat him up. (*Id.*). Robert Moody had the bat with him when he was at the front door. (*Id.* at 131-32). Deputy Truman said Mr. Fultz had injuries. (*Id.* at 132). A 2x4 was found at the scene in Deer Park. (*Id.* at 139).

Mr. Moody testified that his occupation on April 5, 2013, was

selling dope and collecting money. (8/28/13 RP 150). He drove to Deer Park that early morning with a woman and two males. (*Id.*). Not knowing what he was getting into, Mr. Moody had a Louisville Slugger baseball bat and took it to the residence with him. (*Id.* at 151). The two males went with him to the front door. (*Id.*). He knocked on the door and saw a female look through the blinds. A male opened the door and Mr. Moody went in. (*Id.* at 152). Two guys were at the front of the trailer. (*Id.*). As Mr. Moody confronted those inside about the money owed, he saw people out of the corner of his eye, turned around, and connected with two of them with the baseball bat. He took the PlayStation. (*Id.*). He got hit on the back of the head when leaving the trailer. (*Id.* at 155). The two individuals who came with him then left with Mr. Moody. (*Id.*). He acknowledged that he pleaded guilty to two assaults and robbery for the incident and got 48 months in prison. (*Id.* at 158).

The court instructed the jury on self-defense and accomplice liability. (CP 166, 177). The jury found Mr. Fultz guilty of first degree burglary, first degree robbery, and two counts of second degree assault, all with deadly weapon enhancements. (8/28/13 RP 259-60; CP 183-90). At sentencing, the State acknowledged

that the two counts of assault merged with the first degree robbery, count 2. (9/11/13 RP 271-72). The court sentenced Mr. Fultz to a standard range sentence of 89 months total confinement, including two consecutive 24-month deadly weapon enhancements. (CP 221, 222).

He appealed. (CP 215). His convictions and sentence were affirmed by the Court of Appeals. (A-1).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This case should be accepted for review under RAP 13.4(b)(1) and (2) because the Court of Appeals decision conflicts with decisions of the Supreme Court and other decisions of the Court of Appeals.

Although an information that charges an accused as a principal adequately appraises him of his potential liability as an accomplice, *State v. Rodriguez*, 78 Wn. App. 769, 773-74, 898 P.2d 871 (1995), the accused's mere presence at the scene of a crime, even if coupled with assent to it, is insufficient to prove complicity. The State must prove the defendant was ready to assist in the crime. *State v. Luna*, 71 Wn. App. 755, 759, 862 P.2d 620 (1993).

The undisputed facts presented at trial proved Mr. Fultz did not have the baseball bat, did not hit anyone with the bat, did not go into the trailer, did not converse or interact with the residents of the trailer, did not know what was going on in the trailer, did not do anything to provoke the attack by Mr. Knight outside the trailer, and did not take the PlayStation. The only connection Mr. Fultz had with the trailer incident was his mere presence at the scene. Just being there is insufficient to prove accomplice liability for any of the four crimes with which he was charged and convicted. *Luna*, 71 Wn. App. at 759. Even if Mr. Fultz assented to them, that is also not enough to prove complicity. *Id.* Mr. Moody was the sole bad actor. Even when viewed in a light most favorable to the State, it could not, and clearly did not, prove Mr. Fultz was ready to assist in the crimes. *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980). Indeed, he himself was the victim of an assault by Mr. Knight. Mr. Fultz was in the wrong place at the wrong time with the wrong people, but being unlucky is not a crime.

Because the only way for the State to convict was through accomplice liability and it has failed to show complicity beyond a reasonable doubt, all of Mr. Fultz's convictions, along with the

deadly weapon enhancements, must be reversed and the charges dismissed. The Court of Appeals, however, saw no infirmity when it stacked unreasonable inference on unreasonable inference to determine the State presented sufficient evidence to show accomplice liability. (A-6). Inferences must be reasonable; they were not. *Green, supra; Luna, supra.*

It is a rare case when insufficiency of the evidence warrants reversal. This is that case. Review is appropriate under RAP 13.4(b)(1) and (2) because the Court of Appeals decision conflicts with decisions of the Supreme Court and other decisions of the Court of Appeals.

F. CONCLUSION

Based on the foregoing facts and authorities, Mr. Fultz respectfully urges this Court to accept his petition for review and reverse his convictions and sentence.

DATED this 7th day of April, 2015,



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CERTIFICATE OF SERVICE

I certify that on April 7, 2015, I served a copy of the petition for review by first class mail, postage prepaid, on William Lee Fultz, # 369828, 191 Constantine Way, Aberdeen, WA 98520; and by email, as agreed by counsel, on Brian O'Brien at SCPAAppeals@spokanecounty.org.

Kenneth A. Kato

APPENDIX

FILED
March 10, 2015
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	No. 31936-9-III
)	
Respondent,)	
)	
v.)	
)	
WILLIAM LEE FULTZ,)	UNPUBLISHED OPINION
)	
Appellant.)	

BROWN, J. – William Lee Fultz appeals his conviction for first degree burglary, first degree robbery, and two counts of second degree assault, all with deadly weapon enhancements. He contends insufficient evidence shows he was an accomplice in the burglary and robbery convictions. Regarding his assault convictions, Mr. Fultz contends (1) the State failed to disprove self-defense beyond a reasonable doubt and (2) the State failed to show he was an accomplice to one of the assaults. Because the evidence sufficiently supports all convictions, we affirm.

FACTS

On April 4, 2013, Tamara Knight resided with her adult son, Nicholas Knight, in Deer Park; Michael Mendoza and two others were present. Ms. Knight wanted to sell her Ford Bronco for \$500. A woman, Donna, had paid \$140 as a down payment. Ms. Knight gave Donna five days to pay the balance. When Donna failed to pay, Ms. Knight

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sold the Bronco to someone else. Around 11:00 p.m., Donna returned to Ms. Knight's home. Two men, Jason Koch and Mr. Fultz, accompanied a "real mad" Donna. Report of Proceedings (RP) at 56. Ms. Knight refunded Donna the \$140, but when Donna grabbed the money, it was accidentally ripped in half. Ms. Knight told Donna to leave. As she left, Donna told Mr. Fultz to "take care of it." RP at 57.

Around 3:00 a.m. the next morning, Robert Moody, a drug dealer and debt collector, acting at the behest of an unnamed female friend, picked up two male passengers and drove to Ms. Knight's residence. Mr. Moody parked his car a half block away from Ms. Knight's house, grabbed a baseball bat he used for persuasion, and headed toward the house with the other men. Mr. Moody knocked on the door and entered the house uninvited. He immediately confronted the people in the residence about the money owed to Donna and admitted at trial to hitting two people (Mr. Mendoza and Mr. Knight) with the bat and taking a PlayStation before retreating.

Ms. Knight and her son identified the two men with Mr. Moody as Mr. Koch and Mr. Fultz. When Mr. Moody knocked, Mr. Fultz told Ms. Knight "to sit the 'F' down." RP at 58. Mr. Koch then pulled her outside the house just as Mr. Moody, baseball bat in hand, entered the house. As she was being pulled out the door, Mr. Knight jumped out the door and attacked Mr. Fultz. Mr. Knight "had a feeling" a fight was about to occur because "normally people don't show up at my house at three o'clock in the morning." RP at 80. While wrestling with Mr. Fultz, Mr. Knight was hit in the back of the head from behind. Ms. Knight ripped Mr. Fultz' shirt in her attempt to get Mr. Fultz off her son.

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While Mr. Fultz was fighting with the Knights, Mr. Moody hit two people with his bat, grabbed a PlayStation, and ran. The three men left the scene in a white sport utility vehicle (SUV).

Deputies Damon Anderberg and Ryan Truman responded to the Knights' house. They advised Washington State Patrol to be on the lookout for a white SUV. The deputies noted Mr. Knight had abrasions on his upper body. Mr. Mendoza told the deputies he had been hit with a bat.

The deputies heard a white SUV had been stopped at a nearby gas station; its occupants were Mr. Moody, Mr. Koch, Mr. Fultz, and a female. Deputy Truman went to the gas station, where he talked with Mr. Fultz. Mr. Fultz stated he and Mr. Koch were assaulted when they went to the Knights' house to retrieve a battery. Mr. Fultz was unsure if 3:00 a.m. was a normal time to retrieve a battery. According to Mr. Fultz, no one entered the house; instead, "four guys came out and beat him up." RP at 131. Someone hit him on the back of the head with a two-by-four, and someone ripped his shirt while pinning him to the ground. He denied any knowledge of a PlayStation. Inspection of the SUV revealed two bats and a PlayStation; the PlayStation's serial number matched the serial number of the PlayStation taken from Mr. Knight.

The State charged Mr. Fultz with first degree burglary, first degree robbery, and two counts of second degree assault (Mr. Mendoza and Mr. Knight). At trial, Ms. Knight and her son testified consistently with the above facts. Mr. Moody, by then a convicted prisoner concerning these events, reluctantly related he entered Ms. Knight's home

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without permission and struck two men with his bat but would not give names for the other participants. Mr. Fultz did not testify. The court instructed the jury on accomplice liability and self-defense. The jury found Mr. Fultz guilty as charged. Mr. Fultz appealed his convictions.

ANALYSIS

The issue is whether sufficient evidence supports Mr. Fultz' first degree burglary, first degree robbery, and two second degree assault convictions. Regarding the burglary and robbery convictions, Mr. Fultz contends the State failed to prove he was an accomplice. Regarding the assault convictions, Mr. Fultz contends the State failed to disprove self-defense beyond a reasonable doubt.

Evidence is sufficient to support a guilty finding if “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (emphasis omitted) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). An evidence sufficiency challenge “admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We defer to the jury’s assessment of witness credibility and evidence weight. *State v. Carver*, 113 Wn.2d 591, 604, 781 P.2d 1308, 789 P.2d 306 (1989).

“Accomplice liability is principal liability.” *State v. Toomey*, 38 Wn. App. 831, 840, 690 P.2d 1175 (1984). “[A]n individual is guilty as an accomplice if he . . . ‘solicits,

commands, encourages, or requests' another person to commit a crime or aids in its planning or commission, knowing that his . . . act will promote or facilitate the commission of the crime." *State v. McDaniel*, 155 Wn. App. 829, 863, 230 P.3d 245 (2010) (quoting RCW 9A.08.020(3)). Mere presence at the crime scene and assent are not enough to prove accomplice liability. *Id.* The State has to prove "the defendant was ready to assist in the crime." *State v. Luna*, 71 Wn. App. 755, 759, 862 P.2d 620 (1993); see *McDaniel*, 155 Wn. App. at 864.

An individual is guilty of first degree burglary when he enters or remains unlawfully in a building with the intent to commit a crime therein and, either inside or while fleeing, he or another participant was armed with a deadly weapon or assaulted someone. RCW 9A.52.020. "Armed" means the "weapon is readily available and accessible for use." *State v. Chiariello*, 66 Wn. App. 241, 243, 831 P.2d 1119 (1992). A "deadly weapon" includes a weapon "which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6).

An individual is guilty of first degree robbery if, "[i]n the commission of a robbery or immediate flight therefrom, he (i) [i]s armed with a deadly weapon; or (ii) [d]isplays what appears to be a . . . deadly weapon; or (iii) [i]nflicts bodily injury." RCW 9A.56.200(1). Robbery is defined as unlawfully taking "personal property from the person of another or in his . . . presence against his . . . will by the use of immediate

force, violence, or fear of injury to that person or his . . . property or the person or property of anyone." RCW 9A.56.190.

Looking at the evidence in the light most favorable to the State, sufficient evidence supports Mr. Fultz' burglary and robbery convictions. The facts give rise to several reasonable inferences, all of which support the finding that Mr. Fultz acted as an accomplice. First, Mr. Fultz knew Donna received her money, but he returned to Ms. Knight's house early in the morning to retrieve a battery as further repayment. Given Donna's command to Mr. Fultz to "take care of it," the jury could reasonably infer Mr. Fultz' return was for some nefarious purpose. RP at 57. This inference is buttressed by facts showing Mr. Moody parked the car away from the house; the jury could reasonably infer Mr. Moody, Mr. Fultz, and Mr. Koch wanted to surprise the occupants of the house and/or wished to remain unseen. Second, given Mr. Fultz' tersely worded command to Ms. Knight to sit down, it is reasonable to infer he was there to provide support to Mr. Moody. The jury could reasonably infer Mr. Fultz was present to assist Mr. Moody in robbing the Knights, either by actually helping with the robbery or by serving as a distraction. Third, Mr. Fultz accompanied Mr. Moody, who visibly carried a baseball bat with him to Ms. Knight's front door. It is reasonable to think Mr. Fultz knew Mr. Moody would use the bat if need be, and his acquiescence to the presence of the bat could be seen as encouragement to use it. Moreover, the jury apparently gave the Knights' testimony more weight and found it more credible than the statements Mr. Fultz made to

the police. We do not weigh evidence or decide witness credibility. Given the above, a rational trier of fact could find that Mr. Fultz acted as an accomplice.

Next, a person is guilty of second degree assault if he or she assaults another with a deadly weapon. RCW 9A.36.021(1)(c). Self-defense, if successful, "constitutes a complete justification" to the crime. *State v. Rodrigues*, 21 Wn.2d 667, 668, 152 P.2d 970 (1944). Where the defendant is the precipitating aggressor, self-defense is not available as a defense. *State v. Currie*, 74 Wn.2d 197, 198-99, 443 P.2d 808 (1968).

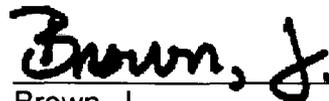
The evidence viewed most favorably for the State sufficiently supports Mr. Fultz' second degree assault convictions concerning Mr. Knight and Mr. Mendoza. Mr. Fultz, who had been present earlier in the evening when Ms. Knight refunded Donna's money, returned to Ms. Knight's house for that same purpose. Two other men accompanied Mr. Fultz to Ms. Knight's door at 3:00 a.m. One of the men with Mr. Fultz, Mr. Moody, wielded a baseball bat for "the purposes of persuasion"; he eventually used that bat to hit two people. RP at 151. Mr. Moody attempted to force Ms. Knight's door open. Ms. Knight was told by Mr. Fultz "to sit the 'F' down" before being physically pulled from the house. RP at 58. The jury could reasonably infer Mr. Fultz was the first aggressor in this situation. As Mr. Knight stated, "normally people don't show up at my house at three o'clock in the morning" unless they are looking for trouble. RP at 80. Ultimately, as seen with the burglary and robbery convictions, the jury found the Knights' version of events more credible. An accomplice "runs the risk of having the [principal] exceed the scope of the preplanned illegality." *State v. Davis*, 101 Wn.2d 654, 658, 682 P.2d 883

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(1984). Sufficient evidence exists to support the theory that Mr. Fultz was an accomplice; his conviction for second degree assault against Mr. Mendoza should not be dismissed.

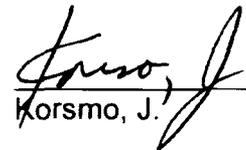
Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.


Brown, J.

WE CONCUR:


Siddoway, C.J.


Korsmo, J.