

74739-8

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NO. 74739-8

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION I

RON APPEGATE, Plaintiff / Appellant,

v.

LUCKY BAIL BONDS, Inc., Defendant / Respondent,

AND

GREG D. PETERSON, Defendant / Respondent,

AND

CESAR LUNA, Defendant / Respondent,

AND

RILEY WIRTS, Defendant / Respondent,

AND

JOHN WIRTS, Defendant / Respondent,

AND

QUEST RECOVERY, Defendant / Respondent.

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REPLY BRIEF OF APPELLANT

RON APPEGATE

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I. INTRODUCTION

The Brief of Respondent (BR) suggests that bounty hunters have a right to act as though they are cowboys from the Wild West, rogue bounty hunters who can do anything they would like to bring in an outlaw, dead or alive, so long as the outlaw is captured and they get their reward money, it doesn't matter who gets hurt. To the contrary, modern day bounty hunters are licensed professionals subject to the laws of a modern day society. The modern day society frowns upon professionals going out for an all-out brawl, with guns in their holsters, on another person's private property.

This is a case about the property rights of third parties, and the injuries sustained by Appellant, Mr. Applegate, in trying to protect his property rights. Mr. Applegate was not a fugitive, he was not an outlaw. He was a frail, disabled father and grandfather, who was demanding a herd of armed men remove themselves from his property. And, he had every right to do so.

Respondent attempts to sweep past the issues presented. The Brief of Respondent relies on the Court not verifying the sources, and policies surrounding that law.

Respondent's main point is that the *Taylor v. Taintor*, 83 U.S. (16 Wall.) 366. 371, 372. 21 L.Ed. 287 (1873) Court gives the power to apprehend a fugitive anywhere, and that anywhere includes private property of third parties. The tendency of Respondent to alter language, is how the disputed jury instructions made it to the jury to begin with.

Providing for unlimited power of bounty hunters over third persons "presents a danger to the community, devolving its peace into a Wild West like spate of forced entries, drawn guns, and third party abductions." Tenn. Att'y Gen Op. No. 01-020 (Feb. 7, 2001) (available at <http://attorneygeneral.tn.gov/op/2001/op/op20.pdf>). Appellant urges this Court not to sanction lawlessness visited upon third parties, in the name of a bail contract. To hold otherwise would render the rights of third parties a nullity.

Accordingly, Appellant requests this Court reverse the judgment and remand for a new trial. In that new trial, the jury should be properly instructed removing Instructions 39 and 41, and repairing Instruction 17 to accurately recite the trespass standard.

II. STATEMENT OF THE CASE

Under RAP Rule 10.3(5) the Statement of the Case must be a fair statement of the facts and procedure, relevant to the issues presented for review, without argument and with reference to the record. The majority of Respondent's Statement of the Case violates RAP 10.3(5).

A. Altercation and Entry into Mr. Applegate's Home

The facts in the record are: Mr. Applegate went outside, onto the small front porch of his home, as the bounty hunters walk to the rear of his house. CP 235. Mr. Applegate yells at the men asking what they are doing. CP 235. Mr. Applegate demands they leave his property. CP 20. One bounty hunter says they have a warrant. Ex. 15, 48, CP 243. Wirts continues to approach towards the front door of the home and, as Mr. Applegate yells for him to get off the property, Mr. Applegate puts up his foot and kicks at him. CP 20, RP 102. Wirts charges at Mr. Applegate, and Luna assists taking Mr. Applegate to the ground. CP 236. During this altercation a hole is made in the wall of Mr. Applegate's home and the doorbell is broken off of his house. RP 27. Mr. Applegate tries to retreat inside

his house, so Wirts and Luna place Mr. Applegate into a headlock, gaining control of him inside of his home. CP 236, 240. Riley Wirts watches his father, John Wirts, and Luna enter the home. CP 159-160. Luna recalls that Mr. Applegate was trying to run inside of his house, and the bounty hunters gained control of him inside of the residence. CP 240. Luna pinned him against the door while bent down on one knee. CP 240. The men *then* identify themselves as bounty hunters explaining they were there to take Elizabeth. CP 245. Elizabeth (who was visiting her children) comes out, and complies with the bounty hunters' requests. CP 236, 245. The next day Luna posts on Facebook about last night saying it was near an "all out BRAWL, just how we like it." Ex. 13.

III. ARGUMENT

A. The Standard of Review is De Novo

The parties agree on the standard of review. The parties disagree about whether the Restatement (Second) of Torts provisions, put forth by Respondent, were accurate recitations of the Restatement, and disagree that those citations in any way reflect common law pertaining to bounty hunters.

B. Washington Does Not Permit Bounty Hunters to Violate Property Rights of a Third Party.

This is not the Wild Wild West. Washington has laws, and our laws create order and protection for its citizens. Our laws apply to bounty hunters in the same way that they apply to every other citizen. Bounty hunters cannot assault innocent third parties and, they cannot trespass onto third party's property. Taking Respondents recitation of the common law authority at face value, could lead one to the inaccurate conclusion that the Courts have given bounty hunters rights that trample on third party property rights. However, Respondent's brief demonstrates an overreach, to justify giving bounty hunters unfettered access to break into homes of third parties. This is a reading that has terrifying consequences for the safety of Washington citizens.

Respondent relies on the proposition that *Taylor v. Taintor* allows entrance into any home. BR, P.18. Respondent cites *Taylor* stating, "[t]he surety may pursue and arrest the defendant at any time and any place in order to surrender him, including breaking into a residence for that purpose." The actual language of *Taylor*,

and the only point where *Taylor* discusses entry of a residence, says that the bounty hunter “may break and enter his house for that purpose.” *Taylor*, 83 U.S. at 371-72 (*emphasis added*). The Supreme Court said, entry of the fugitive’s house, is permitted. That permission has never been extended to third party homes.

Respondent cites *Nicolls v. Ingersoll*, 7 Johns 145 (N.Y. 1810) as the landmark decision granting this power to break and enter into any home where the fugitive is thought to be. *Nicholls* very clearly discusses bounty hunters privilege in terms of the principal-owned homes, not third party homes. Before a trial in New Haven, Connecticut, P. Edwards, the bond company for the defendant Nicolls, orders two bounty hunters to retrieve Nicolls from his New York home in the middle of the night. The bounty hunters broke down Nicolls’ door and removed him from his home. The Court further held that a bounty hunter or bondsmen “may break open the outer door of the principal . . . in order to arrest him.” *Id.* At 18 (*emphasis added*).

Respondent also cites *Read v. Case*, 4 Conn. 166, 170 (1822) under the same claim that bounty hunters can enter third party residences. Again, *Read* supports Appellants position and

only allows entry into the fugitive's home. The *Read* Court states that before a bondsman or his agent could break into a principal's house to make an arrest, the bondsman or agent must announce his identity and intention. The *Read* Court makes no allowances or privileges to enter into third party homes

Respondent cites *Outzts v. Maryland National Insurance*, 505 F.2d 547 (1974) also to support its theory that common law allows bounty hunters to enter third party residences. Again, *Outzts* discusses an entry into the fugitive's residence, not the residence or property of a third party. Further the Court finds that "The Respondents action can thus only be described as private conduct attempting the enforcement of a private contract in total defiance of existing state law." *Id.*

Respondent fails to cite a single Washington case that would give the common law authority it desires.

C. Washington RCW's Require Bounty Hunters to Obtain Consent Prior to Entry into a Third Party Residence

Under Washington statutory law, "[a] contract entered into under this chapter is authority for the person to perform the functions of a bail bond recovery agent as specifically authorized by

the contract and in accordance with applicable law.” RCW 18.185.280. Parties both agree that bounty hunters have the right to apprehend a fugitive they have entered into a bail recovery contract with. This is clearly outlined in RCW 18.185.280. Parties agree that a planned forced entry can take place under RCW 18.185.300, after first notifying law enforcement of the details prior to the entry. Here, the Respondents never raise the protections under RCW 19.185.300, because they had not followed the requirements of RCW 19.185.300.

The statutory scheme in Washington permits bail bond agreements and bail bond recovery agreements to exist. It gives the authority for bounty hunters to capture a fugitive by the terms “specifically authorized by the contract.” RCW 18.185.280. The bounty hunters are required to follow all laws. That includes the laws not to trespass onto private property or break into others homes, without their consent.

Tennessee also has a statutory scheme permitting bounty hunters to effect an arrest. Tennessee Attorney General’s Office provides an opinion on whether a Tennessee code allowing a bounty hunter to arrest a bail jumper “at any place in the State,”

meant that bounty hunters could enter a residence that was not the suspect's residence. The answer was no. Tenn. Att'y Gen Op. No. 01-020 (2001), Review of Bounty Hunter Powers states:

Again, in Tennessee the bail's power of arrest is prescribed exclusively by Tenn. Code Ann. §40-11-133. Because a bounty hunter may arrest a bail jumper "at any place in this state," which necessarily includes any residence, a properly authorized bounty hunter may enter into a third party's residence to effectuate the arrest of a bail jumper with the consent of the third party. However, you have asked whether a bounty hunter may legally break and enter into the residence of a third party. As previously noted, Tennessee has enacted criminal statutes prohibiting a person from entering the home of another without the owner's consent and from entering or remaining on the property of another without the owner's consent. Most jurisdictions which have addressed the question of whether a bounty hunter may break and enter into the residences of third party's have relied on common law authority in holding that such a bounty hunter is subject to prosecution.

Citing *Mishler v. State*, 660 N.E.2d 343, 345 (Ind. App. 1996) (neither statute empowering surety to apprehend defendant nor citizen's arrest statute authorize bail bondsman to forcibly enter private dwelling of third party to arrest principal); *State v. Portnoy*, 718 P.2d 805, 811 (Wash. App. 1986) (bondsman may not sweep from his path all third parties who he thinks are blocking his search for his client, without liability to the criminal law); *State v. Woods*, 984 S.W.2d 201 (Mo. App. 1999) (evidence was sufficient to

establish that defendant bondsman knowingly unlawfully entered residence that was not bond jumper's to support trespass conviction); *State v. McFarland*, 598 N.W.2d 318 (Ia. App.1999) (defendant, a purported bondsman, was not entitled to break into a trailer home and use force against innocent third parties to perfect arrest of felon, where occupants were not interfering with felon's arrest and did not know felon);

Policy reasons for the holding Appellant is seeking from this Court are well put by an Ohio appeals court:

[T]his Court is mindful of the important function that bail bondsmen perform in returning fugitives before the law. It is beyond peradventure that the profession of the bail bondsman can be dangerous. Yet reposing unfettered power in bail bondsmen over third persons presents a danger to the community, devolving its peace into a Wild West like spate of forced entries, drawn guns, and third party abductions. This Court will not sanction lawlessness visited upon third parties in the name of a bail contract. To hold otherwise would render the rights of third parties a nullity upon a bail contract to which they were never a party. The image of the freewheeling bounty hunter bursting into the homes of third parties in pursuit of their bounty, heedless of the law or the constitution, may be the romantic archetype, but it is an image unsupported by controlling authority in Ohio. In short, some lines must be drawn upon the broad authority of the bail bondsman.

State v. Kole, 2000 WL 840503 (Ohio App. 9 Dist., June 28, 2000).

In Washington, the Criminal Code prohibits trespass, and prohibits breaking and entering. RCW 9A.52. The legislature created the crime, and defenses to that crime, and nowhere in the Criminal Code is there an exception for bounty hunters seeking their reward. Without clear contractual authority to enter a particular residence, the law does not lend the support that Respondents claim.

D. Entry into Mr. Applegate's Residence was not Authorized by any Contract

Washington legislature was clear that the authority for the person to perform the functions of a bail bond recovery agent as "specifically authorized" by the contract. RCW 18.185.280. If they have not been given specific rights in the contract with an indemnitor to enter the indemnitors property, then they do not have consent to enter that property.

E. The Restatement (Second) of Torts Sec. 204, 205, 206 Applies to Police Officers, not Bounty Hunters, and has Never Been Adopted in Washington, Contrary to Respondents Claim

The crux of the misstatement of law given in the jury instructions in the case before the Court, comes from Respondent's misapplication of restatement provisions that apply to police officers entering property without consent. The trial Court mistakenly relies on Respondent's assertion that the Restatement (Second) of Torts provisions relating to police officers and trespass has been adopted in Washington and could be extended to apply to bounty hunters. (RP 24). It references *Brutsche v. City of Kent*, 164 Wn.2d 664, 193 P.3d 110 (2008) to apply Restatement (Second) of Torts provisions which contain the standards for police officers executing search warrants on private residences.¹ The flaw in applying these provisions is that bounty hunters are not police officers, nor do they have ability to execute search warrants. Washington has never given the same privileges it gives to State actors, use of force to enter into third party property or residences, to a bounty hunter in search of a fugitive.²

¹ Note that the Restatement provisions modified and submitted by Respondent as jury instruction were based on Sec 204, 205, 206. None of which have ever been adopted in Washington State, and none of which have ever been adopted in any state in relation to bounty hunters powers to trespass.

² Respondent's brief repeatedly asserts that Washington has adopted the Restatement (Second) of Torts, without ever acknowledging that the provisions it submitted as jury instructions in this case were provisions that undoubtedly applied to only police officers serving search warrants. Such provisions have not ever before been expanded to provide bail recovery agents with power to break and enter onto third party residences.

Respondents' theory of the law related to bail recovery agents requires an extension of the bail recovery agent's current authority. Extending from the ability to capture the principal and enter the principal's residence, to the right to enter into private residences owned and occupied by third parties. This is well beyond current law or a reasonable interpretation of that law. This theory of an unfettered privilege to enter not only the fugitive's residence, but the residence of third parties based on anonymous tips, creates extreme potential for dangerous and potentially deadly situations.

IV. CONCLUSION

For all the reasons stated herein, and those stated in Appellant's opening brief, the Court should reverse the Judgment and remand for a new trial, directing the trial Court to properly instruct the jurors, removing Instructions 39 and 41, and repairing Instruction 17 to accurately recite the trespass standard.

DATED this 22nd day of February, 2016.

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CERTIFICATE OF SERVICE

I hereby certify, under the penalty of perjury under the laws of the State of Washington that I personally caused **REPLY BRIEF OF APPELLANT** to be delivered to the following individuals via Email & US Postal Mail:

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