

FILED

May 29, 2015

NO. 32548-2-III

Court of Appeals
Division III
State of Washington

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

RESPONDENT,

v.

GEORGE WALTER LEWIS,

APPELLANT.

BRIEF OF RESPONDENT

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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Grant County Prosecuting Attorney's Office, is the Respondent herein.

II. RELIEF REQUESTED

Reversal is not warranted and Appellant's convictions must be affirmed.

III. ISSUES

1. Whether evidence relevant to the defense of another was excluded.
2. Whether there was ineffective assistance of counsel as there was no request for a jury instruction on the defense of another.

IV. STATEMENT OF THE CASE

The Appellant, George Lewis, was charged with Burglary in the First Degree Domestic Violence while armed with a firearm, Assault in the Second Degree while armed with a firearm, Possession of Methamphetamine, and Malicious Mischief in the Third Degree from events occurring during the early morning hours of October 19, 2013. CP 33-34. (Note: the Possession of Methamphetamine charge arose during the course of Mr. Lewis's arrest on November 22, 2013, and does not appear to be a subject of this appeal.)

Mr. Lewis had been in a long term relationship with Kari Chapman which had ended in July of 2013. RP 121, 284. According to Ms. Chapman, the breakup had been messy and had upset Mr. Lewis. RP 157. Mr. Lewis denied that he had been upset about the breakup, but stated that he knew Ms. Chapman and Brent Harwood were seeing each other at the time. RP 317, 285, 316. Mr. Lewis did not speak to Ms. Chapman for approximately a month after their breakup. RP 286. The night before the night leading up to the events, for which Mr. Lewis was charged, he spent time with Ms. Chapman at his motel during which they discussed getting back together, although Mr. Lewis testified that he had trust issues due to Ms. Chapman's affair. RP 287.

Ms. Chapman also testified about the reconciliation discussion with Mr. Lewis which had occurred the night before October 18/19, 2013. RP 181. During that evening she had spoken to Mr. Lewis about Mr. Harwood "blowing up her phone" and not going away, but she had not expressed any fear of Mr. Harwood to Mr. Lewis. RP 123, 124. Ms. Chapman had also texted Mr. Lewis the day of October 18, 2013, in which they discussed travelling to Spokane. RP 159. During the course of those texts, Ms. Chapman didn't

make any statements or raise any concerns regarding Mr. Harwood. RP 159, 160. When their plans did not materialize, Ms. Chapman did not respond to a text from Mr. Lewis. RP 212. Mr. Lewis then sent her a last text that was "snide and not very sweet." RP 213, 210. There was no testimony that either Ms. Chapman or Mr. Lewis attempted any additional communication with the other.

On the night of October 18, 2013, Mr. Harwood responded to Ms. Chapman's call that he bring her gas on the side of the road where she and her neighbor, Mary Spencer, were stranded. RP 124. Ms. Chapman then invited Mr. Harwood to her home where they arrived around 12:30/1:00 a.m. the morning of October 19, 2013. RP 124, 125.

Mary Spencer, who lived next door to Ms. Chapman, called Mr. Lewis between midnight and 2:00 a.m. the morning of October 19, 2013, to tell him that she'd found his coat and to come and pick it up. RP 105, 291, 106, 115. She also told Mr. Lewis that Mr. Harwood was at Ms. Chapman's, but did not tell Mr. Lewis that she had any concerns about Mr. Harwood being there. RP 107. Ms. Spencer testified at trial that she had had no concerns regarding Ms. Chapman on the night of October 18/19, 2013. RP 119. Ms. Spencer also called Ms. Chapman to tell her that Mr. Lewis was

coming over, because she did have concerns that Mr. Lewis and Mr. Harwood might get into a fight. RP 112. Ms. Chapman said that she did not make any complaints about Mr. Harwood while speaking with Ms. Spencer. RP 158, 159.

Mr. Lewis arrived at the apartment house in his truck accompanied by two men. RP 107. According to Ms. Spencer, when Mr. Lewis arrived, a “big guy” started to get out of the truck, but Mr. Lewis told him “not now” and the “big guy” got back into the truck. RP 108. After Ms. Spencer returned his jacket to Mr. Lewis in the parking lot, he left, and she did as well, walking on her way to the store. RP 108, 109. Ms. Spencer could not recall whether or not she and Mr. Lewis had discussed Ms. Chapman and Mr. Harwood. RP 119. Ms. Spencer also could not recall whether or not Ms. Chapman and Mr. Harwood had been arguing that night, but did recall that she’d had no concerns. RP 111.

When Ms. Spencer returned, she saw Mr. Lewis coming down the complex steps alone. He smiled at her, but did not say anything. RP 109. It was approximately five-ten minutes later that the police arrived. RP 110.

Kari Chapman testified that in October of 2013, she and Mr. Harwood were friends and had been seeing each other. RP 122,

161. She had no concerns about him, or her personal safety, although she did say that Mr. Harwood had been harassing her by “blowing up her phone.” RP 122-124. According to Ms. Chapman, “blowing up her phone” consisted of Mr. Harwood sending texts to her phone by the thousands. RP 161. During cross examination, Ms. Chapman testified that she and Mr. Harwood had had some prior “pushing issues” however she did not elaborate or go into any additional detail as to what those “issues” had consisted of. *Id.* Additionally neither she nor Mr. Lewis testified that this subject had ever been discussed between the two of them.

Not long after Ms. Chapman and Mr. Harwood had returned to her apartment around 12:30/1:00 the morning of October 19, 2013, Ms. Chapman, who was in the bathroom, heard a loud banging. RP 125. When she came out, her front door had been kicked in, and there were three people in her apartment. RP 125, 136. Moses Lake Police Department (MLPD) Officer Adam Munro testified that Ms. Chapman’s apartment was extremely small, approximately 350-400 square feet, and that the full sized bed in the bedroom pretty much filled it up. RP 218, 219.

According to Ms. Chapman, Mr. Lewis was already in her bedroom with Mr. Harwood with the door shut, when she tried to

get out of the bathroom. RP 126, 129. She later stated that it was Mr. Lewis who had shut the bedroom door. RP 163. As she tried to get out of the bathroom, a heavier set male, later identified as "Dustin", told her that she needed to stay in the bathroom and mind her own business. RP 127. Ms. Chapman repeatedly told Dustin, who had what appeared to be a gun as well as a baseball bat, that he needed to leave. RP 129, 165. Ms. Chapman told Dustin that he needed to get out of her apartment, that if Mr. Lewis and Mr. Harwood had issues, they could take care of it. RP 165. According to Ms. Chapman, Dustin eventually got into the bedroom with Mr. Lewis and Mr. Harwood, and Ms. Chapman could hear "loud banging around" and stuff being shoved around; however she could not see into the room. RP 128. Ms. Chapman testified that after the melee, she found that things within her bedroom had been broken. RP 172.

When asked what she'd heard Mr. Lewis say, Ms. Chapman testified:

Just to not come around there no more and to quit harassing me or there was going to be problems. At some point somebody said, you know, to empty their pockets, but I heard – all I heard the defendant say really was just to quit harassing me and to quit coming around there, that there would be problems if he kept harassing me. RP 130.

At trial, Ms. Chapman did not recall telling the officer almost immediately after the incident that it was Mr. Lewis who had been telling Mr. Harwood to empty his pockets. RP 135, 136. According to Ms. Chapman, the entire incident was very chaotic and had lasted about ten to fifteen minutes. RP 140.

Brent Harwood stated that on the morning of October 19, 2013, he was lying down in Ms. Chapman's bedroom, while she was in the bathroom, when he heard "several loud thumps kicking the door in in the front room." RP 242. According to Mr. Harwood

"Well there was several, around six, seven (thumps), and about as loud as a foot wood be kicking the door in as hard as he could kick it, if you weighed a couple hundred pounds. I don't know. But I reinforced the door frame prior to it getting kicked in that time. It had a steel member". RP 242, 243.

Mr. Harwood testified that both Mr. Lewis and Dustin initially attempted to enter the bedroom, while he tried to keep the bedroom door shut. RP 244. According to Mr. Harwood, Mr. Lewis pushed his way in and came him, telling him Mr. Harwood that "he'd fucked up," and was "going to get his ass beat." Mr. Lewis was upset that Mr. Harwood was with his ex-girlfriend in a bedroom that the two of them had previously shared. RP 245. Initially, Mr. Lewis had no

weapons. RP 245. Mr. Harwood attempted to defend himself with a five foot curtain rod, waving it at Mr. Lewis in an effort to keep him away. 246, 247, 248. Mr. Harwood then pulled a knife, telling Mr. Lewis not to come near him. RP 246. Mr. Harwood had his knife out before the second man (Dustin) came into the room but then dropped it. RP 251.

According to Mr. Harwood, he had had his knife and the curtain rod in one hand, trying to hold the door shut with his other shoulder, when he dropped the knife and no one picked it up. RP 261. Eventually the bedroom door was open enough for a baseball bat to come flying through the door, and for Dustin to come into the bedroom with, what appeared to Mr. Harwood to be, a semi-automatic Ruger pistol. RP 249, 250. Mr. Harwood did not know Dustin. RP 253, 254. Mr. Harwood, who was cornered, testified that he climbed over the bed to get himself between the bed and the wall. RP 249. When Mr. Harwood got tangled in the sheets, Mr. Lewis swung at Mr. Harwood and struck him in the head, although not with the bat. RP 257, 258. And while both men had the bat at one time or another, according to Mr. Harwood, Mr. Lewis did not have the gun. RP 250. Mr. Harwood believed that he was going to be shot and was concerned for his life. RP 250, 255.

Both men told Mr. Harwood to empty his pockets. RP 251. While Mr. Lewis was telling Mr. Harwood to empty his pockets, he asked him why he was there. When Mr. Harwood replied that it was his girlfriend's house, and he had lying in bed, Mr. Lewis asked him how he could do that, telling Mr. Harwood that he and Ms. Chapman had been together for ten years. RP 252, 253. Mr. Harwood told Mr. Lewis that he wasn't going to empty his pockets, that there was a child in the other room, and that Ms. Chapman was calling the cops. RP 253. He repeatedly asked Mr. Lewis what are you doing, what are you thinking? RP 253.

When Mr. Lewis and Dustin finally exited the bedroom, Ms. Chapman told him that she was going to call the cops. RP 140. Mr. Lewis and Dustin told her more than once not to call the cops. RP 141. Mr. Lewis also told Ms. Chapman that it was her fault and pushed her backwards causing her to land in the bathtub. RP 141, 255. Ms. Chapman called 911 immediately. RP 173. When law enforcement arrived three to five minutes later, at approximately 2:20 a.m., Ms. Chapman was visibly upset and crying, stating "I can't believe this just happened." RP 257, 216. Mr. Harwood was also upset and had blood running down his forehead. RP 217, 257. Officer Munro testified that it was not possible to secure the front

door, and both Ms. Chapman and Mr. Harwood testified that Mr. Harwood had previously replaced/repared her front door. RP 219, 160, 243. Officer Munro made attempts to locate Mr. Lewis that morning, and during the subsequent days, but was unsuccessful in his multiple attempts until over a month later on November 22, 2013. *Id.*

When Officer Munro contacted Mr. Lewis at the Hang Out bar in Moses Lake on November 22, 2013, Mr. Lewis told the officer that he had methamphetamine in his pocket. RP 221, 222. Mr. Lewis also told Officer Munro that he had kicked in the door to Ms. Chapman's apartment and that he had been there to make sure that she was okay. RP 228. Mr. Lewis went on to say that while he had been there, he beat up Mr. Harwood. *Id.* According to the officer, these statements were made spontaneously and not in response to questioning. *Id.* Mr. Lewis did not make any reference to any other individuals being present during the incident. RP 234.

Both Mr. Lewis and Ms. Chapman testified that they had discussed Ms. Chapman avoiding her subpoena. RP 214, 308. Up until the day before trial Mr. Lewis had been calling and discussing the case with Ms. Chapman. RP 21, 172. Ms. Chapman had visited Mr. Lewis at the jail, and he had asked her to write a letter

saying the incident was her fault as he believed that to be the case.
RP 132, 199, 205, 309.

Mr. Lewis testified that he and Ms. Chapman had been together the night before, and that she had told him that she didn't know what she was going to do with Mr. Harwood as he was going to prison for five years. RP 287. According to Mr. Lewis, Mr. Harwood had been blowing up Ms. Chapman's phone with repeated "spoof texts," and that on the night that the two of them had been together, Ms. Chapman had been unable to use her phone. RP 288.

In direct examination, counsel asked Mr. Lewis:

Ms. Oglebay: All – it is a narrative, but I'm – did she tell you any other concerns that she had?

Mr. Lewis: You know, honestly, I can't think of anything other than just she just didn't know how she was going to deal with Brent, and as far as him coming over to the house and harassing her. You know, he –

Ms. Oglebay: Okay.

Mr. Lewis: That was about the extent of it. RP 289.

According to Mr. Lewis, he'd known Dustin about a month and the third man (who did not enter the bedroom) was a cousin of Ms. Chapman's, Omar. RP 291, 309. Ms. Chapman denied that the third man was her cousin. RP 126. Mr. Lewis had been with the two men at a pool tournament at the Hang Out on the evening of

October 18, 2013, and had then gone with them to the Sand Bar to play additional pool. 292, 293. Mr. Lewis had left the Sand Bar after about half an hour to go pick up "his lady friends," but when they told him it was too late, he went to Papa's and then back to the Sand Bar to pick up Dustin and Omar to give them a ride home. RP 293, 294. On their way, Mr. Lewis stopped at Mary Spencer's to pick up his jacket. RP 294, 295. According to Mr. Lewis, he asked Ms. Spencer if Kari was home, and Ms. Spencer told him that Ms. Chapman and Mr. Harwood had been arguing. RP 296, 297.

Mr. Lewis testified that Ms. Spencer then went across the street and that after she had gone, he went to Ms. Chapman's door. RP 297. According to Mr. Lewis, he knocked on Ms. Chapman's door which was opened a crack by Mr. Harwood, who upon seeing Mr. Lewis, shut the door and dead-bolted it. RP 297. Mr. Lewis stated that he went back downstairs, thought about calling the police, went to his truck, and told Dustin and Omar that he needed to go back upstairs. RP 298. He did so, and they followed. RP 299. Mr. Lewis had not asked them to do so. RP 299. After knocking really loudly and banging several times, Dustin kicked the door in. RP 300. According to Mr. Lewis he needed to get inside to make sure

that Ms. Chapman was okay. RP 300. His concern stemmed from what Ms. Chapman had told him the night before and the fact that she hadn't answered his last text. RP 304.

Mr. Lewis's recollection of his interaction with Mr. Harwood differed significantly from Mr. Harwood's. Mr. Lewis stated that Mr. Harwood had been waiting for him behind the bedroom door with a knife in his hand and had shut the door behind Mr. Lewis, trapping him. RP 305. Mr. Lewis yelled "he's got a knife" and Dustin tried to help by pushing the door open. *Id.* Once Mr. Harwood was distracted by Dustin's efforts, Mr. Lewis realized that Ms. Chapman was okay and that Dustin had turned "this" into something that Mr. Lewis had had no intention of it becoming. RP 306. Mr. Lewis had been unaware that Dustin had found a bat and air pistol until Dustin came to his aid in the bedroom. RP 312, 313. Mr. Lewis also realized that Ms. Chapman was upset with him, not Mr. Harwood, and felt as if he'd been duped. RP 307. As he was leaving, Mr. Lewis pushed Ms. Chapman backward and she fell into the tub. RP 313. Mr. Lewis never contacted law enforcement about his concerns. RP 311. Mr. Lewis also denied that when he spoke with Officer Munro he had told the officer that he'd kicked in Ms. Chapman's door, or that he had gone in and beaten up Mr.

Harwood. RP 310. Mr. Lewis denied making any statements whatsoever to Officer Munro about the October 19, 2013 incident. *Id.* Mr. Lewis's concerns were based on Mr. Harwood's excessive texting and showing up at Ms. Chapman's apartment without permission. RP 311, 312.

Neither Dustin nor the third man, whom neither Ms. Chapman nor Mr. Harwood knew, or did not know well, testified. RP 125, 126, 253, 254.

V. ARGUMENT

A. LEWIS'S CLAIM THAT HE WAS ENTITLED TO A DEFENSE OF OTHERS INSTRUCTION IS NOT SUPPORTED BY THE EVIDENCE WITH OR WITHOUT THE INCLUSION OF THE PRIOR INCIDENTS.

A criminal defendant is generally entitled to a jury instruction on the defense theory of the case. *State v. Ager*, 128 Wn. 2d 85, 93, 904 P.2d 715 (1995), *State v. Staley*, 123 Wn. 2d 794, 803, 872 P.2d 502 (1994). If a proposed instruction states the proper law and is supported by the evidence, it is reversible error to refuse to give the instruction. *Ager*, 128 Wn. 2d at 93.

Under Washington law, an actor may use force to defend another if he subjectively believes the other is in imminent danger and a reasonable person, considering only the circumstances

known to the actor, would share his belief. *State v. Penn*, 89 Wn.2d 63, 66, 568 P.2d 797 (1977); *State v. Watkins*, 61 Wn. App. 552, 561, 811 P.2d 953 (1991); RCW 9A.16.020(3). While the threshold burden of production for a self-defense instruction is low, it is not non-existent. *State v. Janes*, 121 Wn.2d 220, 850 P.2d 495 (1993).

Counsel argued for the inclusion of testimony about prior acts asserting they would have supported a defense of others claim, however, there is no showing that Mr. Lewis was entitled to a defense of others claim. RP 23-27, 29, 34, 35. Mr. Lewis denied the very acts which would be lawfully excused were he entitled to the defense, and there was no showing of a reasonable belief of an imminent threat to Ms. Chapman.

Appellant argues that the court should have allowed testimony regarding two prior incidents:

The first incident allegedly occurred in mid-July of 2013, some five months before the October incident. According to Mr. Lewis, he had knocked on the door of Kari Chapman's apartment which was opened by Brent Harwood who allegedly said "step the fuck away from me or I'll fucking stab you." RP 23, 26, 27, 29. *N.B.* the testimony at trial was that Mr. Lewis and Ms. Chapman had broken

up in July of 2013. There was no indication that Ms. Chapman had been present during this incident.

The second incident occurred on August 4, 2013. At that time, Mr. Lewis and Ms. Chapman sat in his truck, preparing to go to the bank. RP 23, 192. Mr. Harwood saw them, and enraged, told Ms. Chapman to either get out of the truck or he was going to smash it. RP 23, 190. Ms. Chapman did not get out and Mr. Harwood proceeded to smash all the truck windows with his crowbar. *Id.* He also struck Ms. Chapman, requiring her to receive 7 stitches in her leg. RP 23, 191.

However, speaking of the incident in an interview with the defense investigator, Ms. Chapman stated “oh, yeah, I had seven stitches in my leg. And it wasn’t – he (Mr. Harwood) wasn’t trying to hurt me or hit me with it.” Later in the interview, Ms. Chapman referred to the incident as a “pissing match between the two boys.” RP 189-191.

Mr. Lewis sought to introduce these two incidents for context for his mental state and his defense that he was coming to the defense of another; negating the intent element in first degree burglary, and as a defense to the assault charge and explaining why his two acquaintances followed him into the apartment.

As an aside, the State would point out that both the July and August incidents involve direct physicality towards Mr. Lewis, not Ms. Chapman. However, that argument is unnecessary as Mr. Lewis consistently denied the very acts of October 13, 2013, which constituted the underlying crimes for which he was charged. Mr. Lewis cannot simultaneously claim that he did not commit the acts, while claiming that he did commit the acts but with a lawful defense. This type of defense was clearly prohibited in *State v. Aleshire*, 89 Wn.2d 67, 568 P.2d 799 (1977). In *Aleshire*, the defendant was charged with assaulting a bartender who refused to serve him. At trial, the defendant denied that he struck the bartender. The court subsequently held, "One cannot deny that he struck someone and then claim that he struck them in self-defense." *Aleshire*, 89 Wn.2d at 71. See also *State v. Alvarez*, 37 Wn.App. 508, 681 P.2d 859 (1984), *State v. Gogolin*, 45 Wn.App. 640, 727 P.2d 683 (1986), *State v. Hendrickson*, 81 Wn.App. 397, 914 P.2d 1194 (1996).

B. IT IS CLEAR THAT THE TRIAL COURT CONSIDERED LEWIS'S DEFENSE OF OTHERS CLAIM AT THE TIME OF DETERMINING JURY INSTRUCTIONS AND MADE AN AFFIRMATIVE DECISION NOT TO ALLOW IT.

The last day of trial started with the parties reviewing the jury instructions which they had discussed the day before after both

sides had rested. RP 328, 330, 331. After the State objected to the inclusion of a self-defense instruction, the Court stated:

I wanted to place something else on the record, that I wanted to complete, and that was the court's decision not to allow evidence of two prior incidents involving Mr. Harwood, the alleged victim. These relate to the State's motions *in limine* one and what, we've been referring to as 1A, an incident where some windows were broken out of a car and an incident allegedly where the victim, Mr. Harwood, had pulled a knife.

That evidence was argued by the defendant to be admissible to negate or refute the element in burglary one of an intent to commit a crime. The theory proffered by the defendant was that he may have committed the crime of criminal trespass, but that it was necessary for him to bring along friends and a baseball bat out of concern for Mr. Harwood's proclivity for violence as evidenced by those incidents, and that that would negate evidence that he went to the Chapman residence with the intent to commit a crime.

I would note that it appears now there is no evidence to support that proposition in that when the defendant testified, he testified that he went to the door both times by himself, intended to go to the door by himself, and that unbeknownst to him the second time he went to the door on the evening in question, his two companions then followed him, but not at his request. And when asked about the alleged weaponry, the defendant's testimony was that he did not ask his friends or cohorts to bring any weapons, and that, in fact, he was surprised that they had. He hadn't asked them to.

And in fact, also testified that those two items, a bat and what he's testified to as an air pistol, were in his car for children, that the bat was relating to baseball with children, and the air pistol

was for children, as well. And so that it turns out, then, there would not be any evidence to support the argument made by the defendant in support of the admissibility of that evidence. 332-334.

Defense counsel then supplemented the record with additional reasoning to support Mr. Lewis's offer for the admission of the July and August incidents. RP 334, 335.

C. NOT ONLY DID APPELLANT DENY THE ACTS WHICH IF DONE IN DEFENSE OF ANOTHER WOULD BE LAWFUL, HE ALSO FAILED TO SHOW ANY REASONABLE BELIEF OF AN IMMINENT THREAT TO KARI CHAPMAN.

An individual, who acts in defense of another person, reasonably believing him to be the innocent party and in imminent danger, is justified in using force necessary to protect that person when there is evidence to support it. The necessity for the use of force is judged from the viewpoint of the defendant and a jury determines what a reasonably prudent person would have done in the circumstances as they appeared to the defendant at the time of the event. *State v. Penn*, 89 Wn.2d 63, 65, 568 P.2d 797 (1977).

In a light most favorable to Mr. Lewis, he may have believed all of the following facts during the early morning hours of October 19, 2013.

According to Mr. Lewis, Mary Spencer told him that Ms. Chapman and Mr. Harwood had been arguing; Ms. Chapman had not responded to a text that he'd sent her hours earlier or a subsequent one which Ms. Chapman characterized as "snide"; Ms. Chapman had told Mr. Lewis the night before that she was interested in getting back together with him, and that Mr. Harwood had been "blowing up her phone" which made it difficult for her to use her phone; Mr. Harwood would come to Ms. Chapman's apartment without permission; and when Mr. Lewis knocked on Ms. Chapman's door on the morning of October 19, 2013, Mr. Harwood opened the door a crack, saw him and shut the door and dead-locked it.

Not only did Mr. Lewis deny the acts which if lawful would establish his defense, he fails to show any reasonable belief of imminent danger to Ms. Chapman. There was no testimony that anyone could hear arguing, yelling, or screaming from the apartment, there was no testimony that Ms. Chapman had told Mr. Lewis about the "pushing issues" which involved herself and Mr. Harwood, there was no testimony that the text messages sent by Mr. Harwood were in any way harassing, frightening, or threatening, rather they were described as "spoof" messages. Ms.

Chapman's inability to use her phone on the night she and Mr. Lewis had been together was not because Mr. Harwood was physically preventing her from doing so, but rather because of the volume of texts that he was allegedly sending. One would assume that if Mr. Harwood were physically with Ms. Chapman he would not be sending her any texts. Additionally there was no evidence that Ms. Chapman was unable to use her phone that night, and in fact, Ms. Spencer testified that she had called her to let her know that Mr. Lewis was on his way because she had concerns that Mr. Lewis and Mr. Harwood might fight.

Additionally, Mr. Lewis's own actions belie any assertion of concern for Ms. Chapman. He testified that he went to pick up his coat from Mary Spencer. Not only did he not enlist the help of Mary Spencer when she allegedly told him of the arguing, he waited until she left to go up to Ms. Chapman's apartment. Mr. Lewis was so unconcerned about Kari Chapman, he didn't go up with his friends the first time, nor according to Mr. Lewis, did he ask his friends to go with him the second time after Mr. Harwood had allegedly shut the door in his face, but rather was surprised when his friends took it upon themselves to accompany him with what appeared to be

weapons. Mr. Lewis also didn't know why Dustin would kick the door in.

Mr. Lewis was so unconcerned about Ms. Chapman, that upon his entry, he didn't check on her, or try to find out if she was alright. Mr. Lewis claimed that he was immediately ambushed by Mr. Harwood waiting behind the bedroom door and that he had had to protect himself. The Court did allow a self-defense claim and accompanying jury instructions which apparently the jury did not believe. RP 349, 350, 411.

Mr. Lewis was jealous that Mr. Harwood was with his former girlfriend in her apartment at a time of the night when one could infer that Mr. Harwood might be staying over. Mr. Lewis testified that Ms. Chapman had been unfaithful during their relationship with Mr. Harwood, and that he and Ms. Chapman had recently discussed reuniting.

Both Mr. Harwood and Ms. Chapman testified that Mr. Harwood was repeatedly told to empty his pockets during the melee with Mr. Lewis and Dustin. This behavior would indicate that Mr. Lewis was in the position of aggressor, not Mr. Harwood, and that Mr. Lewis's intentions were to harm or rob Mr. Harwood not to protect Ms. Chapman.

In fact it was Mr. Lewis's testimony that once he realized what Dustin had turned the situation into, he decided to leave. It is unclear how if this were true, it would alleviate any concerns that Mr. Lewis may have had about Ms. Chapman, and why, when he finally did have direct contact with her, he didn't even initially ask Ms. Chapman if she was alright, but rather told her "this is all your fault," and pushed her back into the bathtub.

D. APPELLANT'S STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW DOES NOT CITE ANY SUPPORTING AUTHORITY, NOR IS HIS ASSERTION BORNE OUT BY A REVIEW OF THE TRIAL PROCEEDINGS.

Without some supporting authority or reference, the State is simply unable to respond to Mr. Lewis's statement of additional grounds for review.

VI. CONCLUSION

In this case there is only the defendant's purported subjective belief, which is not supported by the defendant's own behavior on the night in question as testified to by any of those present, nor is his purported belief supported by what he supposedly knew even if what he knew is taken in a light most favorable to himself. The circumstances and Mr. Lewis's actions belie his claim regarding his supposed concern for Ms. Chapman or any attempt to come to her

assistance or protection. For those reasons Mr. Lewis was not entitled to the inclusion of evidence regarding his prior contacts with Brent Harwood, nor his requested jury instruction regarding defense of another and his convictions should be affirmed.

DATED this 28th of May, 2015.

Respectfully submitted:

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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

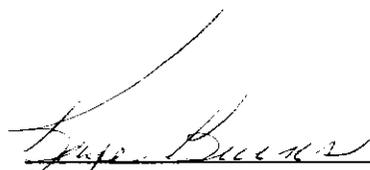
STATE OF WASHINGTON,)	
)	
Respondent,)	No. 32548-2-III
)	
vs.)	
)	
GEORGE WALTER LEWIS,)	DECLARATION OF SERVICE
)	
Appellant.)	
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Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I served a copy of the Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Marie Jean Trombley
marietrombley@comcast.net

Dated: May 29, 2015.



Kaye Burns