

4573-1

64^r

NO. 64573-1-1

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ANTAURUS WILSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

APPELLANT'S OPENING BRIEF

JAN TRASEN
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

2010 JUL 23 PM 4:41
JAN TRASEN
1511 3RD AVENUE SUITE 701
SEATTLE WA 98101

TABLE OF CONTENTS

A. SUMMARY OF ARGUMENT	1
B. ASSIGNMENTS OF ERROR.....	1
C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....	1
D. STATEMENT OF THE CASE.....	2
E. ARGUMENT	5
1. THERE WAS INSUFFICIENT EVIDENCE TO CONVICT MR. WILSON OF RESIDENTIAL BURGLARY, AS THE STATE FAILED TO MEET ITS BURDEN BEYOND A REASONABLE DOUBT.....	5
a. The prosecution bears the burden of proving all essential elements of an offense beyond a reasonable doubt.....	5
b. In order to prove that Mr. Wilson was guilty of residential burglary, the prosecution was required to prove he unlawfully entered a dwelling.....	7
c. The prosecution failed to prove beyond a reasonable doubt that Mr. Wilson unlawfully entered the building.	8
d. The prosecution's failure to prove all essential elements requires reversal	10
2. THE ERRONEOUS ACCOMPLICE LIABILITY INSTRUCTION DEPRIVED MR. WILSON OF HIS RIGHT TO A FAIR TRIAL.....	10
a. The court must accurately instruct the jury on the essential requirements of accomplice liability.....	10

b. Misstating the mental element of accomplice liability is manifest constitutional error.....	12
c. The erroneous instruction was not harmless, and reversal is required.	14
F. CONCLUSION.....	15

TABLE OF AUTHORITIES

Washington Supreme Court

State v. Acosta, 101 Wn.2d 612, 683 P.2d 1069 (1984)..... 6, 11

State v. Bergeron, 105 Wn.2d 1, 71 P.2d 1000 (1985)..... 11

State v. Brown, 147 Wn.2d 330, 58 P.3d 889 (2002) . 11, 12, 13, 14

State v. Byrd, 125 Wn.2d 707, 887 P.2d 1229 (1995) 11

State v. Carter, 154 Wn.2d 71, 109 P.3d 823 (2005)..... 13

State v. Cronin, 142 Wn.2d 568, 14 P.3d 752 (2000) 5, 10

State v. Eastmond, 129 Wn.2d 497, 919 P.2d 577 (1996) 11

State v. Green, 4 Wn.2d 216, 616 P.2d 628 (1980)..... 6

State v. Johnson, 100 Wn.2d 607, 674 P.2d 145 (1983)..... 11

State v. Roberts, 142 Wn.2d 471, 14 P.3d 713 (2000)11, 12, 13, 14

Washington Court of Appeals

State v. Prestegard, 108 Wn.App. 14, 28 P.3d 817 (2001)..... 7

State v. Theroff, 25 Wn.App. 590, 608 P.2d 1254, affd, 95 Wn.2d 385, 622 P.2d 1240 (1980)..... 6

United States Supreme Court

In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970)
..... 5, 10

Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560
(1979)..... 6

<u>Neder v. United States</u> , 527 U.S. 1, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999)	14
<u>Sandstrom v. Montana</u> , 442 U.S. 510, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979)	6, 11
<u>United States v. Gaudin</u> , 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).....	11

Federal Courts

<u>United States v. Bautista-Avila</u> , 6 F.3d 1360 (9 th Cir. 1993).....	6
<u>United States v. Lopez</u> , 74 F.3d 575 (5 th Cir. 1996).....	7

Washington Constitution

Article I, 3	5, 10
--------------------	-------

United States Constitution

Fourteenth Amendment	6, 10, 11
----------------------------	-----------

Statutes

RCW 9A.08.020	12
---------------------	----

Rules

RAP 2.5.....	11
--------------	----

A. SUMMARY OF ARGUMENT

Antaurus Wilson's conviction for residential burglary must be reversed because the State failed to prove every element of the crime beyond a reasonable doubt. Specifically, the State failed to meet its burden to prove that on September 27, 2008, Mr. Wilson unlawfully entered a home with the intent to commit a crime. In addition, the State failed to produce sufficient evidence of accomplice liability.

B. ASSIGNMENTS OF ERROR

1. The State presented insufficient evidence to convict Antaurus Wilson of residential burglary, in that the prosecutor failed to prove that Mr. Wilson unlawfully entered a dwelling with intent to commit a crime against a person or property therein.

2. By incorrectly defining the essential elements of accomplice liability in Instruction 13, the court impermissibly diluted the State's burden of proof and denied Mr. Wilson his right to a fair trial by jury.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. To prove residential burglary, the State must prove beyond a reasonable doubt that the defendant unlawfully entered a residence with intent to commit a crime against a person or

property therein. Must Mr. Wilson's conviction for residential burglary be reversed and dismissed where the State failed to prove beyond a reasonable doubt that Antaurus Wilson, as principle or accomplice, unlawfully entered the building?

2. The court must completely and accurately instruct the jury on all essential elements of a charged offense. In an accomplice liability case, the court must inform the jury that a person is legally complicit for the acts of another only when he or she knowingly participates in the offense charged. Here, the court told the jury it need only find Mr. Wilson knowingly facilitated or agreed to aid "the crime." Did the incorrect definition of accomplice liability dilute the State's burden of proof and violate Mr. Wilson's right to a fair trial by jury?

D. STATEMENT OF THE CASE

Antaurus Wilson was charged and convicted of residential burglary in connection with events occurring in Maple Valley on September 27, 2008. 10/21/09 RP 25.¹

¹ The verbatim report of proceedings consists of nine volumes of transcripts from October 8, 2009, through December 17, 2009. The proceedings will be referred to herein as follows: "10/08/09 RP ___." References to the file will be referred to as "CP ___."

In the early hours of the morning, Mr. Wilson, accompanied by two friends, went to this unfamiliar neighborhood, in order to assist his friend Jennifer Stanifer in moving some items from her former boyfriend's home. 10/26/09 RP 9-10. Mr. Wilson and his friend, Dominique Henry, rode with Ms. Stanifer to Maple Valley, and Ms. Stanifer drove Mr. Wilson's car to the location that she desired. 10/26/09 RP 9. After they arrived, Ms. Stanifer directed the young men to a location near a specific house and asked the men to load the car with items sitting near a fence, including a 46-inch television, a suitcase full of smaller items, a wallet, and a cell phone. Id. at 10-11, 16-17. Although Mr. Wilson later realized that Ms. Stanifer's explanation seemed a bit suspicious, he trusted her, and helped her move the items that she said were her belongings. Id. at 12-13.

Meanwhile, noticing an unfamiliar car on the otherwise quiet street, Lloyd Bondy, a neighbor, promptly called 911. 10/21/09 RP 27. When Mr. Bondy noticed objects being loaded into the same car, including a large flat object resembling a painting,² he blocked access to the road with his own car and directed his wife to call 911

² This object resembling a painting was apparently the 46-inch flat-screen television recovered from Mr. Wilson's car. 10/21/09 RP 97-99.

again. Id. at 36-37. Mr. Bondy had a short discussion with Mr. Wilson as they waited for the police to arrive. Id. at 41.

Upon the arrival of the Maple Valley police, the responding officers interviewed Mr. Bondy, while a separate patrol car was dispatched to search for Mr. Wilson's car, which was searching for an egress from the neighborhood, in order to bypass the road which Mr. Bondy had blocked with his own car. 10/26/09 RP 27.

After picking up Mr. Bondy, the 911 caller, officers located a nearby house with garage door and laundry doors that were ajar. 10/21/09 RP 49. Officers awakened the occupant, Nathan Madins, informing him that his home had apparently been burglarized while he slept. 10/21/09 RP 97-99. Police brought the two neighbors to a nearby road-side location where they had stopped Mr. Wilson's car and conducted a show-up procedure, where Mr. Madins identified his property, and Mr. Bondy identified Mr. Wilson as the driver whose car he had blocked and with whom he had briefly spoken. 10/21/09 RP 50, 101-03.

At trial, Mr. Wilson explained that he never entered the home where the items were located. 10/26/09 RP 11. Although his fingerprints were recovered from the television that he helped to move, none of Mr. Wilson's fingerprints were found inside the

house that was burglarized. 10/22/09 RP 26-30, 36, 87. Ms. Stanifer testified for the State and blamed the entire incident on Mr. Wilson and Mr. Henry. 10/22/09 RP 92-93, 94-95. Ms. Stanifer, however, initially told the police she was retrieving property from her ex-boyfriend, just as Mr. Wilson did. *Id.* at 90-91.

Following a jury trial before the Honorable Michael Heavey, Mr. Wilson was convicted of residential burglary. CP 34. He timely appeals. CP 60-70.

E. ARGUMENT

1. THERE WAS INSUFFICIENT EVIDENCE TO CONVICT MR. WILSON OF RESIDENTIAL BURGLARY, AS THE STATE FAILED TO MEET ITS BURDEN BEYOND A REASONABLE DOUBT.

a. The prosecution bears the burden of proving all essential elements of an offense beyond a reasonable doubt. The State has the burden of proving each element of the crime charged beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *State v. Cronin*, 142 Wn.2d 568, 580, 14 P.3d 752 (2000). This allocation of the burden of proof to the prosecutor derives from the guarantees of due process of law contained in article I, sections 3 and 22 of the Washington

Constitution³ and the 14th Amendment of the federal constitution. Sandstrom v. Montana, 442 U.S. 510, 520, 99 S.Ct. 2450, 61 L.Ed.2d 39 (1979); State v. Acosta, 101 Wn.2d 612, 615, 683 P.2d 1069 (1984). On a challenge to the sufficiency of the evidence, this Court must reverse a conviction when, after viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

In a claim of insufficiency, the reviewing court presumes the truth of the State's evidence as well as all inferences that can be reasonably drawn therefrom. State v. Theroff, 25 Wn. App. 590, 593, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980). However, when an innocent explanation is as equally valid as one upon which the inference of guilt may be made, the interpretation consistent with innocence must prevail. United States v. Bautista-Avila, 6 F.3d 1360, 1363 (9th Cir. 1993). “[U]nder these circumstances, a reasonable jury must necessarily entertain a

³ Art. I, section 3 provides, “No person shall be deprived of life, liberty, or property, without due process of law.”

reasonable doubt.” United States v. Lopez, 74 F.3d 575, 577 (5th Cir. 1996). Speculation and conjecture are not a valid basis for upholding a jury’s guilty verdict. State v. Prestegard, 108 Wn. App. 14, 42-43, 28 P.3d 817 (2001).

b. In order to prove that Mr. Wilson was guilty of residential burglary, the prosecution was required to prove he unlawfully entered a dwelling. Because Mr. Wilson was convicted of residential burglary under RCW 9A.52.025, the prosecution was required to prove each element of statute. CP 50-59, CP 82 (Jury Instruction 11). The statute reads:

(1) A person is guilty of residential burglary if, with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

(2) Residential burglary is a class B felony

RCW 9A.52.025. “Entry” is further defined at RCW 9A.52.010:

The word “enter” when constituting an element or part of a crime, shall include the entrance of the person, or the insertion of any part of his body, or any instrument or weapon held in his hand and used or intended to be used to threaten or intimidate a person or to detach or remove property.

RCW 9A.52.010(2). In addition, RCW.9A.52.010 clarifies that a person “enters or remains unlawfully” in a building “when he is not then licensed, invited, or otherwise privileged to enter or remain.” RCW 9A.52.010(3).

c. The prosecution failed to prove beyond a reasonable doubt that Mr. Wilson unlawfully entered the building. In Washington, an individual may be guilty of a crime either as a principal or as an accomplice. RCW. 9A.08.020; State v. Silva-Baltazar, 125 Wn.2d 472, 480, 886 P.2d 138 (1994). A person may be charged as a principal and convicted as an accomplice, but only if the jury is instructed on accomplice liability. State v. Davenport, 100 Wn.2d 757, 764-65, 675 P.2d 1213 (1984) (reversing burglary conviction where court failed to give accomplice liability instruction).

Here, although the court gave an accomplice liability instruction, the prosecution failed to show that Mr. Wilson entered the Madins home, or that he knowingly aided in the commission of a burglary. See infra. In order to convict, the jury was required to find that Mr. Wilson entered or remained unlawfully inside the burglarized residence. Without sufficient evidence of accessorial

liability, see infra, Mr. Wilson could not be convicted based upon another person's entry.

As discussed above, "enter" is defined as "the entrance of a the person" or a part of his body into a building, as well as the insertion of a weapon or instrument used to threaten or intimidate a person in the building or to detach or remove property. RCW 9A.52.010(2). In this case, there may be circumstantial evidence that someone entered Mr. Madins's home and stole his property. 10/21/09 RP 36-37, 97-99. There is insufficient evidence, however, that Mr. Wilson entered the residence.

Mr. Wilson admitted to assisting his friends, Mr. Henry and Ms. Stanifer, to move some objects that night, and Mr. Wilson's fingerprints were found on one of those items – the television set that apparently belonged to Mr. Madins. 10/22/09 RP 26-30, 36, 87; 10/26/09 RP 10-17. There was no physical evidence to support the conclusion that Mr. Wilson's had entered the Madins home, however, and no fingerprints or eye-witnesses placed him in the home. 10/22/09 RP 26-30, 36, 87, 94-95. In short, even examining the evidence in the light most favorable to the State, there is no evidence that Mr. Wilson entered the residence that night.

d. The prosecution's failure to prove all essential elements requires reversal. The prosecution failed to sufficiently show that Mr. Wilson committed a residential burglary, by failing to prove that he had unlawfully entered a building, an essential element of the charged offense. Absent proof of every essential element, the conviction must be reversed and the charge dismissed. State v. Hundley, 126 Wn.2d 418, 421-22, 895 P.2d 403 (1995).

2. THE ERRONEOUS ACCOMPLICE LIABILITY INSTRUCTION DEPRIVED MR. WILSON OF HIS RIGHT TO A FAIR TRIAL.

a. The court must accurately instruct the jury on the essential requirements of accomplice liability. The most fundamental concepts of criminal procedure require the State to prove to a jury every essential element of a crime beyond a reasonable doubt. Cronin, 142 Wn.2d at 580 (citing inter alia Winship, 397 U.S. at 364. This allocation of the burden of proof to the prosecutor derives from the guarantees of due process of law contained in article 1, sections 3 and 22 of the Washington Constitution⁴ and the 14th Amendment of the federal constitution.⁵

⁴ Art. 1, section 3 provides, "No person shall be deprived of life, liberty, or property, without due process of law."

Sandstrom, 442 U.S. at 520; Acosta, 101 Wn.2d at 615. Where the jury is instructed in a manner that relieves the State of its burden of proving the defendant knew he was facilitating the crime charged, the error is presumed prejudicial. State v. Brown, 147 Wn.2d 330, 339, 58 P.3d 889 (2002).

The Washington Supreme Court has made clear that the omission of an element of the crime from a jury instruction is an error of constitutional magnitude reviewable when raised for the first time on appeal. State v. Johnson, 100 Wn.2d 607, 623, 674 P.2d 145 (1983), overruled on other grounds by State v. Bergeron, 105 Wn.2d 1, 71 P.2d 1000 (1985); State v. Byrd, 125 Wn.2d 707, 713-14, 887 P.2d 1229 (1995). Accordingly, this issue is a manifest constitutional error, which is appropriate for review. RAP 2.5(a)(3); State v. Roberts, 142 Wn.2d 471, 500, 14 P.3d 713 (2000); State v. Eastmond, 129 Wn.2d 497, 502, 919 P.2d 577 (1996).

⁵ The Fourteenth Amendment provides in pertinent part, "No State shall . . . deprive any person of life, liberty, or property, without due process of law." The Sixth Amendment expressly guarantees the right to a jury trial and the Fifth Amendment has been interpreted to require the State to establish all elements of guilt beyond a reasonable doubt. Together, they guarantee a criminal defendant the right to have the jury determine, beyond a reasonable doubt, every essential element of guilt. United States v. Gaudin, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995).

b. Misstating the mental element of accomplice liability is manifest constitutional error. The particular mens rea for accomplice liability is a requirement that the accused knew he was facilitating the commission of the specific crime charged. RCW 9A.08.020(3)(a); Roberts, 142 Wn.2d at 500; Cronin, 142 Wn.2d at 580. An instruction that merely speaks to knowledge that the accused facilitated any crime is constitutionally deficient, requiring reversal. Cronin, 143 Wn.2d at 580-82. As the Washington Supreme Court said in Brown,

It is a misstatement of the law to instruct a jury that a person is an accomplice if he or she acts with knowledge that his or her actions will promote any crime.

147 Wn.2d at 338 (emphasis in original).

Here, although the instruction was more specific than that discussed in Brown, it allowed the jury to convict Mr. Wilson of residential burglary if it found that he knew his conduct would promote or facilitate “the commission of the crime.” CP 82 (Jury Instruction 13) (emphasis added). The court’s instruction read as follows, in pertinent part:

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing the crime.

CP 82 (Jury Instruction 13) (emphasis added). This instruction raises an analagous deficiency to the one raised in Brown, 147 Wn.2d at 337-38; Roberts, 142 Wn.2d at 510, and Cronin, 142 Wn.2d at 576-77. It does not correctly inform the jurors that the accused must have knowledge of “the” particular charged crime when accomplice liability is based on aiding or agreeing to aid another. State v. Carter, 154 Wn.2d 71, 75-76, 109 P.3d 823 (2005) (single “a crime” that should have read “the crime” invalidates accomplice instruction). This instruction repeatedly asks the jury to consider only whether Mr. Wilson was an accomplice in “the crime,” as opposed to the specific type of crime – residential burglary -- with which he was charged.

In order to prove that Mr. Wilson was an accomplice to a residential burglary, the State had to show he possessed knowledge he was aiding in the commission of this particular crime. His conviction cannot be sustained by a general knowledge he was aiding in other types of crime, such as merely trespassing or even possessing stolen property, as even he conceded he may have

attempted during that evening. 10/26/09 RP 10-17. See, e.g., Roberts, 142 Wn.2d at 512.

c. The erroneous instruction was not harmless, and reversal is required. In Brown, the court applied a strict constitutional harmless error test when analyzing whether the erroneous instruction required reversal. Brown, 147 Wn.2d at 340. The constitutional analysis requires the prosecution to prove beyond a reasonable doubt the error did not affect the jury verdict. Id., citing Neder v. United States, 527 U.S. 1, 9, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999).

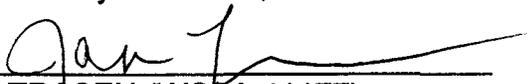
The jury instructions here failed to inform the jury that accomplice liability required knowingly aiding in a residential burglary -- the particular type of crime charged -- and this flaw undermines the verdict and impermissibly dilutes the prosecution's burden of proof. Accordingly, reversal is required.

F. CONCLUSION

For the foregoing reasons, Mr. Wilson respectfully requests this Court reverse his conviction and remand the case for further proceedings.

DATED this 23rd day of July, 2010.

Respectfully submitted,



JAN TRASEN (WSBA 41177)
Washington Appellate Project (91052)
Attorney for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

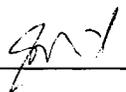
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 64573-1-I
v.)	
)	
ANTAURUS WILSON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 23RD DAY OF JULY, 2010, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
[X] ANTAURUS WILSON 336388 REYNOLDS WORK RELEASE 410 4 TH AVE SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 23RD DAY OF JULY, 2010.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710