

NO. 70519-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MARTENIS MINNIFIELD,

Appellant.

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CLERK OF COURT
KING COUNTY
COURTHOUSE
1000 4TH AVENUE
SEATTLE, WA 98104
10

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE KEN SCHUBERT

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Notice of the State's intent to seek an exceptional sentence based on aggravating circumstances is constitutionally sufficient when the defendant can mount a defense to the aggravator. Minnifield was charged with two crimes for the same conduct, assault in the first degree and assault in the second degree. For the second-degree assault charge, prior to trial the State alleged the aggravating factor that the resulting injuries substantially exceeded the level of harm necessary to satisfy the elements of the crime. The jury convicted Minnifield of second-degree assault, as an inferior crime of first degree assault, and found the aggravating factor. Did Minnifield have notice of the State's intent to seek an exceptional sentence?

2. The invited error doctrine precludes review of a claim of error if the party seeking review materially contributed to the error at trial. Minnifield proposed the instructions that allowed the jury to find the aggravating circumstance on count I, which provided the basis for the exceptional sentence that he now challenges. Should this Court decline to review Minnifield's challenge to his sentence?

B. STATEMENT OF THE CASE

On August 5, 2011, defendant Martenis Minnifield stabbed his cousin, Saul Collins, approximately three times in the neck. CP 4-5.¹ The two men had argued over Minnifield finishing most of Collins' energy drink at the apartment they shared with Collins' mother. CP 4-5. Collins went to his room to avoid Minnifield, but Minnifield confronted Collins, said "I'm tired of you," and stabbed him. CP 5.

Collins suffered significant injury as a result of Minnifield's crime. One King County Sheriff's Office deputy saw that Collins was "bleeding profusely," had arterial bleeding coming from the left side of his neck, and that his blood was "pulsing out onto the concrete." CP 4. Collins' heart stopped during transport to the hospital and during surgery, yet he managed to survive the attack. CP 5. In addition to the stab wounds to his neck, he had a cut on his left forearm. CP 5.

A knife with a bloody blade was recovered from Minnifield's pocket during a search incident to arrest. CP 4. Family members

¹ The facts of the incident are taken from the Certification for Determination of Probable Cause. Defense counsel only transcribed the sentencing hearing because that was the sole transcript authorized by the order of indigency. See Brief of Appellant at page 7, footnote 3.

reported that Minnifield had been diagnosed with schizophrenia and bipolar disorder, but that he had stopped taking his medication one year before the stabbing. CP 5.

The State charged Minnifield by information with assault in the first degree – domestic violence. CP 1. The information included a special allegation that Minnifield was armed with a deadly weapon, a knife, at the time of the crime. CP 2. On February 8, 2013, the trial court granted the State's motion to amend the information to add count II, assault in the second degree – domestic violence, for the same incident. CP 23-24. For this count, the State alleged that Minnifield was armed with a deadly weapon and charged the aggravating circumstance that the victim's injuries substantially exceeded the level of bodily harm necessary to satisfy the elements of the crime under RCW 9.94A.535(3)(y). CP 24. The case proceeded to trial on March 14, 2013. CP 273.

Both parties submitted jury instructions and briefing in support of those instructions to the trial court. CP 61-134, 231-72, 387-89. For count I, Minnifield proposed inferior-degree instructions of assault in the second degree and assault in the third

degree. 2RP² 4-6; CP 115. The prosecutor objected to giving an inferior-degree instruction of second-degree assault because it would be confusing and redundant, since that crime was already charged in count II. 2RP 8-10; CP 129-30. For count II, Minnifield proposed an inferior-degree instruction of assault in the third degree. CP 120. The prosecutor did not object to instructing the jury on the inferior-degree crime of assault in the third degree for each count. 2RP 7-8.

When the parties discussed the defense request for inferior-degree instructions, Minnifield's counsel "concede[d] under the case law that an aggravator is not an element; that it may [sic] not be charged in the information, and there's some really clear case law on that to that point [sic]." 2RP 16. To support the argument for an instruction on the inferior-degree crime of second-degree assault, counsel stated, "Also with respect to the aggravator, I have no objection because it is not an element that it be something that the jury may consider -- if they cannot reach a decision on assault in the first degree." 2RP 20. The court decided

² The verbatim report of proceedings consists of two volumes. One volume, which will be referred to in this brief as 1RP, is from the sentencing hearing on 5/17/13 and was prepared by defense counsel. The second volume, which will be referred to in this brief as 2RP, is a transcript that the State requested and obtained involving discussions about jury instructions on 3/27/13 and 4/2/13.

to instruct the jury on inferior-degree crimes. 2RP 16; CP 139-49, 172, 177.

In response to the trial court's preliminary rulings on jury instructions, the prosecutor submitted a second set of instructions that included inferior-degree crimes. CP 303-57. During the discussion of defense's proposed instruction for the aggravating factor, Minnifield's attorney offered to strike the language "as charged in count II" from that instruction.³ 2RP 64; CP 123. He further stated, "If you want to have the same instruction apply wherever assault two appears, whenever the jury considers it, I would have no issue with that." 2RP 64-65; CP 123. The court confirmed with defense counsel that he was proposing to remove "as charged in count II" from the first sentence of that instruction. 2RP 65.

³ Defense counsel's proposed instruction for the aggravating circumstance originally read:

If you find the defendant guilty of assault in the second degree as charged in count II, then you must determine if the following aggravating circumstances exist:

Whether the victim's injuries substantially exceeded the level of bodily harm necessary to constitute substantial bodily harm, as defined in these instructions. The victim's injuries substantially exceed the level of bodily harm necessary to constitute substantial bodily harm if the injuries constitute great bodily injury. CP 123.

On the record, the court noted exceptions from both parties to the State's second set of jury instructions, before making that set the final version of the court's instructions to the jury. 2RP 85-108. Instruction 28, which defined the aggravating circumstance for second-degree assault, did not limit the aggravator to count II; rather, it applied the aggravator to the crime of assault in the second degree.⁴ CP 183. The prosecutor noted, and the court verified, that instruction 28 was the defendant's proposed instruction and that defense had no exception to it. 2RP 99-100; CP 183. Defense counsel confirmed: "No objection, no exception. The Court has given the instruction that we have requested, and we acknowledge that." 2RP 100.

The jury found Minnifield guilty of assault in the second degree as an inferior-degree crime of count I. CP 140. Using special verdict forms, the jury found that the following circumstances applied to this crime: (1) the victim's injuries

⁴ Instruction 28 stated:

If you find the defendant guilty of Assault in the Second Degree, then you must determine if the following aggravating circumstances exist:

Whether the victim's injuries substantially exceeded the level of bodily harm necessary to constitute substantial bodily harm, as defined in these instructions. The victim's injuries substantially exceeded the level of bodily harm necessary to constitute substantial bodily harm if the injuries constitute great bodily harm. CP 183.

substantially exceeded the level of bodily harm necessary for substantial bodily harm, (2) Minnifield was armed with a deadly weapon during the crime, and (3) Minnifield and Collins were family or household members. CP 143-45.

At sentencing, both parties acknowledged that the court had the authority to impose an exceptional sentence based on the aggravating factor that the level of harm substantially exceeded that necessary to commit the offense. 1RP 5-9, 16; CP 191-98, 402-08. The prosecutor asked the court to impose 84 months of confinement, plus 12 months of confinement for the deadly weapon enhancement, because Minnifield's standard range of 6-12 months did not adequately account for the significant injury inflicted on Collins, which had left him perilously close to death. 1RP 5-9; CP 402-08. Defense counsel asked for 24 months of confinement (including the deadly weapon enhancement) and an exceptional term of 36 months of community custody. 1RP 16; CP 193-94.

Based on the aggravating factor, the court imposed an exceptional sentence of 48 months of confinement, plus 12 months for the deadly weapon finding, for a total of 60 months of confinement on count I. 1RP 32-34, 37; CP 214-24. Further, the court imposed an exceptional term of community custody consisting

of 60 months. 1RP 38-39; CP 214-24. Findings of fact and conclusions of law were entered for the exceptional sentence. CP 221-22. Minnifield appeals. CP 229.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY IMPOSED AN EXCEPTIONAL SENTENCE BECAUSE NOTICE OF THE STATE'S INTENT TO SEEK AN EXCEPTIONAL SENTENCE WAS CONSTITUTIONALLY SUFFICIENT; MOREOVER, MINNIFIELD INVITED ANY ERROR.

Minnifield argues that his sentence should be vacated and remanded for imposition of a standard range sentence because the State did not provide notice of intent to seek an exceptional sentence on count I. This argument should be rejected. Minnifield's sentence should be affirmed because the State provided constitutionally sufficient notice of intent to seek an exceptional sentence for the crime of which he was convicted. In any event, the invited error doctrine precludes review of Minnifield's claim because he proposed the instructions that allowed the jury to find the aggravating circumstance for count I.

- a. Notice Of Intent To Seek An Exceptional Sentence Was Constitutionally Sufficient Because Minnifield Was Convicted Of The Same Crime, And The Same Aggravator, With Which He Was Charged Prior To Trial.

By statute, the State may give notice, “[a]t any time prior to trial or entry of the guilty plea if substantial rights of the defendant are not prejudiced,” that it intends to seek an exceptional sentence based on aggravating circumstances. RCW 9.94A.537(1).

However, the statute does not specify the manner in which notice must be given. State v. Siers, 174 Wn.2d 269, 277, 274 P.3d 358 (2012). Aggravating factors need not be charged in the information because they are not essential elements of the underlying crime. Id. at 276-77.

Moreover, although the statute specifies that notice of an aggravating factor should be given prior to trial or guilty plea, due process requirements of “[o]ur state and federal constitutions require only that a criminal defendant be provided notice of the charges sufficient to allow the defendant to prepare a defense.” State v. Berrier, 143 Wn. App. 547, 555-56, 178 P.3d 1064 (2008) (citing State v. Yates, 161 Wn.2d 714, 757-60, 168 P.3d 359 (2007)). Accordingly, even in the absence of strict compliance with

the statute, notice is constitutionally sufficient if there is no prejudice to the defendant's ability to mount a defense.

Here, Minnifield had notice well in advance of trial of the State's intent to seek an exceptional sentence for assault in the second degree based on the aggravating factor. CP 23-24. Because he had known for over a month that he had to defend against this crime and this aggravator, Minnifield's ability to prepare a defense was not prejudiced. CP 23-24. He does not challenge the timing of the amendment to the information that added count II and the aggravator, does not contend that he was erroneously denied a continuance for the amendment, and does not claim any prejudice from the amendment. See State v. Schaffer, 63 Wn. App. 761, 767, 822 P.2d 292 (1991) (defendant's failure to ask for a continuance in response to amended charge during trial creates a presumption of the lack of surprise and prejudice), aff'd, 120 Wn.2d 616, 845 P.2d 281 (1993).

To support his argument that the State did not provide notice of intent to seek an exceptional sentence for count I, Minnifield attempts to distinguish State v. Siers. 174 Wn.2d 269. On the contrary, Siers plainly supports the exceptional sentence at issue here. In Siers, the defendant was convicted of two counts of

assault in the second degree for two victims, but one count was reversed on appeal because the aggravating factor that the victim was acting as a good Samaritan was not included in the charging document. Id. at 272-73. Siers' attorney had acknowledged that, prior to trial, the State had given notice that it intended to prove the aggravator. Id. at 277. In reversing the court of appeals, the Washington Supreme Court found that although notice of aggravating circumstances must be given to allow a defendant to prepare a defense, aggravating factors need not be charged in the information. Id. at 275-77.

Here, Minnifield's defense was not prejudiced because count I and count II were charged for the same criminal act, stabbing Collins. The aggravating circumstance was charged in the information, thereby fulfilling the notice requirement of Siers. 174 Wn.2d at 275-77; CP 23-24. Moreover, defense counsel acknowledged that Minnifield had notice of the aggravating circumstance: "If you want to have the same instruction apply wherever assault two appears, whenever the jury considers it, I would have no issue with that." 2RP 64-65; CP 123.

Under these circumstances, Minnifield's constitutional right to notice that he needed to defend against second-degree assault

with the aggravator was satisfied and the trial court properly imposed an exceptional sentence.

b. Minnifield Invited Any Error By Proposing Jury Instructions That Permitted The Jury To Find The Aggravating Circumstance For Count I.

Under the invited error doctrine, appellate courts will not review a party's assertion of an error to which the party "materially contributed" at trial. In re Dependency of K.R., 128 Wn.2d 129, 147, 904 P.2d 1132 (1995). This doctrine applies to proposed jury instructions, even where the to-convict instruction omitted an essential element of the crime and the error was of constitutional magnitude. City of Seattle v. Patu, 147 Wn.2d 717, 720-21, 58 P.3d 273 (2002) (the court is bound by precedent to apply the invited error doctrine even in the case of a constitutionally deficient to-convict jury instruction); State v. Boyer, 91 Wn.2d 342, 343-45, 588 P.2d 1151 (1979) (declining to reach a constitutional issue when the instruction given is one that the defendant himself proposed).

Courts apply the invited error doctrine strictly, sometimes with harsh results. See, e.g., State v. Studd, 137 Wn.2d 533, 546-47, 973 P.2d 1049 (1999) (holding that this doctrine prohibited review of legally erroneous jury instruction even though it was standard WPIC when defendant proposed it); State v. Smith, 122 Wn. App. 294, 299, 93 P.3d 206 (2004) (noting that defendant who participates in drafting of jury instruction may not challenge the instruction on appeal). Thus, under the invited error doctrine, this Court is precluded from reviewing jury instructions where the defendant has proposed an instruction or agreed to its wording.⁵ State v. Winings, 126 Wn. App. 75, 89, 107 P.3d 141 (2005).

In the present case, Minnifield invited any error of which he now complains. Through his counsel, Minnifield proposed instructions on inferior-degree crimes for count I, even though the State had already charged one of them, assault in the second degree, in count II for the same conduct. 2RP 3-5; CP 64-68, 115. The court granted defense's request for an additional second-degree assault instruction over the State's objection. 2RP 8-10;

⁵ Minnifield attempts to create an artificial boundary between sentencing and trial by arguing that he is not alleging instructional error. However, his challenge to his exceptional sentence cannot be fairly evaluated without considering the parties' discussions about jury instructions, as they are integrally associated with the sentence imposed in this case.

CP 129-30, 172. Further, defense counsel suggested striking the language "as charged in count II" from his proposed instruction for the aggravator. 2RP 64; CP 123, 183. Counsel reiterated his proposal to apply the aggravator to both counts: "If you want to have the same instruction apply wherever assault two appears, whenever the jury considers it, I would have no issue with that." 2RP 64-65; CP 123.

When the parties went through the court's instructions to the jury before closing argument, Minnifield's counsel confirmed that the defense proposed the instruction that applied the aggravator to assault in the second degree in both counts: "No objection, no exception. The Court has given the instruction that we have requested, and we acknowledge that." 2RP 100; CP 183. By proposing and endorsing these instructions, Minnifield created a situation where the jury considered the aggravator for assault in the second degree as an inferior-degree crime of count I, and as charged in count II. Thus, this Court should decline to review his claim.

D. CONCLUSION

For the reasons set forth above, the State respectfully asks this Court to affirm Minnifield's exceptional sentence.

DATED this 25 day of November, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

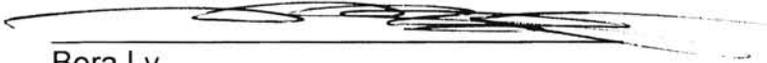
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Eric Broman, the attorney for the appellant, at Nielsen, Broman & Koch PLLC, 1908 E Madison Street, Seattle, WA, 98122, containing a copy of the Brief of Respondent, in State v. Martenis Demorreo Minnifield, Cause No. 70519-9, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 25 day of November, 2014.


Bora Ly
Done in Seattle, Washington