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No. 71141-5-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TYLISHA B.,

Appellant.

2014 SEP -8 PM 1:32
CLERK OF APPEALS DIVISION
COURT OF APPEALS
STATE OF WASHINGTON

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

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

A. ARGUMENT..... 1

 1. **Error was properly assigned to Finding of Fact 10, which is a conclusion of law erroneously designated as a finding of fact, by challenging the sufficiency of the evidence.....1**

 2. **Even if RAP 10.3(g) requires error to be assigned to a conclusion of law incorrectly designated as a finding of fact, non-compliance with this technical requirement does not preclude review.....3**

B. CONCLUSION.....4

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

Daughtry v. Jet Aeration Co., 91 Wn. 2d 704, 592 P.2d 631 (1979)...3-4

Leschi Improvement Council v. Wash. State Highway Comm'n,
84 Wn.2d 271, 525 P.2d 774 (1974).....1-2

Pardee v. Jolly, 163 Wn.2d 558, 182 P.3d 967 (2008).....2

State v. Hill, 123 Wn.2d 641, 87 P.2d 313 (1994).....2

Woodruff v. McClellan, 95 Wn.2d 394, 622 P.2d 1268 (1980).....2-3

Washington Court of Appeals Decisions

Casterline v. Roberts, 168 Wn. App. 376, 284 P.3d 743 (2012).....2

Goehle v. Fred Hutchinson Cancer Research Ctr.,
100 Wn. App. 609, 614, 1 P.3d 579 (2000).....3

Para-Medical Leasing, Inc. v. Hangen, 48 Wn. App. 389,
737 P.2d 717 (1987).....2

Polygon Nw. Co. v. Am. Nat. Fire Ins. Co., 143 Wn. App. 753,
189 P.3d 777 (2008).....3

State v. Niedergang, 43 Wn. App. 656, 719 P.2d 576 (1986).....2

Decisions of Other Jurisdictions

NLRB v. Marcus Trucking Co., 286 F.2d 583 (2d Cir. 1961).....1-2

Rules and Statutes

RAP 10.3.....1, 3

RCW 9A.08.020.....2

A. ARGUMENT

1. Error was properly assigned to Finding of Fact 10, which is a conclusion of law erroneously designated as a finding of fact, by challenging the sufficiency of the evidence.

The brief of an appellant should contain a separate and concise statement for each error a party contends was made by the trial court.

RAP 10.3(a)(4). In the opening brief, Tylisha challenged her convictions for two counts of assault in the fourth degree based on insufficient evidence. Br. of App. at 1 (Assignment of Error 1).

Finding of Fact 10 reads:

The respondent encouraged [Marie] and [Aushinae] to fight [Marie] identified [sic] [Shaylea].

CP 32. The State contends that because error was not specifically assigned to Finding of Fact 10, this Court should not consider Tylisha's argument that this finding is a mislabeled and unsupported conclusion of law. Br. of Resp. at 24.

A separate assignment of error must be included for each finding of fact that a party contends with was improperly made. RAP 10.3(g). "A finding of fact is the assertion that a phenomenon has happened or is or will be happening independent of or anterior to any assertion as to its legal effect." *Leschi Improvement Council v. Wash. State Highway*

Comm'n, 84 Wn.2d 271, 283, 525 P.2d 774 (1974) (quoting *NLRB v. Marcus Trucking Co.*, 286 F.2d 583, 590 (2d Cir. 1961)). Findings of fact are reviewed under a substantial evidence standard. *Pardee v. Jolly*, 163 Wn.2d 558, 566, 182 P.3d 967 (2008). “Substantial evidence” is evidence sufficient to persuade a fair minded, rational person of the finding’s truth. *State v. Hill*, 123 Wn.2d 641, 644, 87 P.2d 313 (1994).

This “finding” addressed whether Tylisha instructed, commanded, encouraged, or requested another person to fight. *See* CP 32. If a term carries legal implications, a determination of whether it has been established is a conclusion of law. *Para-Medical Leasing, Inc. v. Hangen*, 48 Wn. App. 389, 397, 737 P.2d 717 (1987). “Conclusions of law are determinations made by a process of legal reasoning from the facts in evidence.” *Casterline v. Roberts*, 168 Wn. App. 376, 382-83, 284 P.3d 743 (2012) (citing *State v. Niedergang*, 43 Wn. App. 656, 658-59, 719 P.2d 576 (1986)).

Whether Tylisha’s statement, “Okay, fight” as heard on the video makes her an accomplice because she is soliciting, commanding, encouraging, or requesting another person to commit a crime is a question of law. *See* RCW 9A.08.020(3)(a)(i). A conclusion of law

erroneously described as a finding of fact is reviewed as a conclusion of law. *Woodruff v. McClellan*, 95 Wn.2d 394, 396, 622 P.2d 1268 (1980).

The question of whether Tylisha encouraged anyone to fight requires the application of legal reasoning (i.e., the definition of accomplice liability) to the facts in evidence (i.e., Tylisha's statement). Because Finding of Fact 10 is actually a conclusion of law, Tylisha complied with RAP 10.3(a)(4) by assigning error to the insufficiency of the evidence to support her convictions.

2. Even if RAP 10.3(g) requires error to be assigned to a conclusion of law incorrectly designated as a finding of fact, non-compliance with this technical requirement does not preclude review.

A minor technical violation of RAP 10.3(g) will not bar appellate review where the nature of the challenge is perfectly clear and the challenged ruling is set forth and fully discussed in the appellate brief. *Polygon Nw. Co. v. Am. Nat. Fire Ins. Co.*, 143 Wn. App. 753, 774 n. 6, 189 P.3d 777 (2008) (citing *Goehle v. Fred Hutchinson Cancer Research Ctr.*, 100 Wn. App. 609, 614, 1 P.3d 579 (2000)). RAP 1.2(a) makes clear that technical violation of the rules will not ordinarily bar appellate review, where justice is to be served by such

review. *Daughtry v. Jet Aeration Co.*, 91 Wn. 2d 704, 710, 592 P.2d 631 (1979).

Finding of Fact 10 is addressed in the argument section of Tylisha's opening brief, where she contends that this finding required application of legal reasoning to the facts and therefore was actually a mislabeled conclusion of law. Br. of App. at 14-15. The State responded to this argument in its brief. Br. of Resp. at 24-25. Because the nature of the challenged ruling is discussed and perfectly clear in the opening brief, this Court should consider the merits of the challenge.

B. CONCLUSION.

For the foregoing reasons as well as those argued in Appellant's Opening Brief, Tylisha respectfully requests this Court reverse her convictions.

DATED this 5th day of September, 2014.

Respectfully submitted,



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

| | | |
|----------------------|---|---------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| Respondent, |) | |
| |) | NO. 71141-5-I |
| v. |) | |
| |) | |
| TYLISHA B., |) | |
| |) | |
| Juvenile Appellant. |) | |

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 5TH DAY OF SEPTEMBER, 2014, I CAUSED THE ORIGINAL **REPLY 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:

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SIGNED IN SEATTLE, WASHINGTON THIS 5TH DAY OF SEPTEMBER, 2014.

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