

# SUPREME COURT COPY

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DEPARTMENT OF JUSTICE

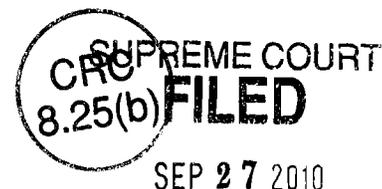


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September 24, 2010

Honorable Frederick K. Ohlrich, Clerk  
Supreme Court of California  
350 McAllister Street, First Floor  
San Francisco, CA 94102-4797



Frederick K. Ohlrich Clerk

RE: THE PEOPLE OF THE STATE OF CALIFORNIA v. PAUL D. ANDERSON Deputy  
California Supreme Court Case No. S175351; California Court of Appeal No. E045650

Dear Mr. Ohlrich:

On July 26, 2010, this Court requested that the parties file supplemental letter briefs directed to the merits of the Court of Appeal's conclusion that "section 211's requirement of the use of force or fear in accomplishing the taking of property or in retaining the property during asportation or escape in effect requires a purposeful or willful act involving a general intent to use force or fear to initially take property or thereafter retain the stolen property during asportation or escape. Absent that purposeful or willful use of force, a robbery is not committed."

The Court of Appeal's conclusion that a secondary mens rea<sup>1</sup> element exists in section 211 is incorrect because it effectively establishes a second specific intent requirement that finds no support in the history and legislative intent of the section. This Court's prior decisions addressing the "force or fear" element of robbery, which provide that the "force or fear" must be motivated by the thief's intent to steal, address a causal matter, and not one of intent. Finally, this Court has upheld as sufficient explications of this element in the existing standard jury instructions, which were given to this jury. Notably, if the Court of Appeal were correct, every robbery conviction in the entire state would be in jeopardy because no court has ever instructed that such a specific intent is required.

In its opinion, the Court of Appeal provided, "[beyond the specific intent to steal] robbery also requires a secondary mental state equivalent to a general intent to commit the act of using force or fear against the victim to accomplish the initial taking of the property or retaining it

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<sup>1</sup> The Court of Appeal characterizes this mens rea as a "secondary mental state."  
(Opinion at p. 16.)

during the defendant's escape or asportation of the property." (Opinion at p. 16.) Although the Court of Appeal attempted to characterize this secondary mens rea element as a general criminal intent, the court's analysis firmly demonstrates that its proposed secondary mens rea is one of specific criminal intent. Under the Court of Appeal's interpretation, in order to commit robbery, in addition to harboring the well established specific intent to steal, the prosecution must further prove beyond a reasonable doubt that the thief possessed the intent to use force or fear in order to achieve the purpose of taking or asporting the stolen property. By definition, this intent to achieve a future consequence (i.e. the ability to escape unhindered with the loot) is a specific intent.

This Court's previous examination of the distinction between general criminal intent and specific criminal intent is instructive:

A crime is characterized as a "general intent" crime when the required mental state entails only an intent to do the act that causes the harm; a crime is characterized as a "specific intent" crime when the required mental state entails an intent to cause the resulting harm. (See *People v. Hood* (1969) 1 Cal. 3d 444, 456-457 [82 Cal. Rptr. 618, 462 P.2d 370].) "When the definition of a crime consists of only the description of a particular act, without reference to intent to do a further act or achieve a future consequence, we ask whether the defendant intended to do the proscribed act. This intent is deemed to be a general criminal intent. When the definition refers to defendant's intent to do some future act or achieve some additional consequence, the crime is deemed to be one of specific intent." (*Id.* at pp. 456-457.)

(*People v. Davis* (1995) 10 Cal.4th 463, 518, fn. 15.) Therefore, although the Court of Appeal attempts to characterize this secondary mens rea element as requiring a "general [criminal] intent" (Opinion at p. 16), the language employed by the Court of Appeal clarifies that in fact the robber must possess a specific criminal intent because the element refers to the thief's intent to commit an act for purpose of "achiev[ing] some additional consequence." (*Ibid.*) That is a specific criminal intent.

This creation of a specific intent is not supported by the history and legislative intent of section 211. That section provides: "Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear."

The principles governing statutory construction are well established. As this Court has observed, "The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law." (*People v. Pieters* (1991) 52 Cal.3d 894, 898.) In approaching this task, a court "must first look at the plain and common sense meaning of the statute because it is generally the most reliable indicator of legislative intent and purpose." (*People v. Cochran* (2002) 28 Cal.4th 396, 400.) If there is "no ambiguity or uncertainty in the language, the Legislature is presumed to have meant what it said," and it is not necessary "to resort to legislative history to determine the statute's true meaning." (*Id.* at p. 400-401.)

However, "[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act." (*Pieters, supra*, at 899.) Courts do not construe statutes in isolation, but rather "read every statute `with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.' [ Citation.]" (*Ibid.*) Namely, the words must be considered ""in context, keeping in mind the nature and obvious purpose of the statute. . . ." [ Citation.]" (*People v. Murphy* (2001) 25 Cal.4th 136, 142.)

Penal Code Section 211, enacted in 1872, incorporated the robbery requirements as provided by the common law. (*People v. Gomez* (2008) 43 Cal.4th 249, 254, fn. 2, citing *People v. Tufunga* (1999) 21 Cal.4th 935, 945–947.) "Under the common law, the crime of robbery consists of larceny plus two aggravating circumstances: (1) the property is taken from the person or presence of another; and (2) the taking is accomplished by the use of force or by putting the victim in fear of injury. (4 Wharton's, Criminal Law (15th ed. 1995) § 454, pp. 2–3 (Wharton); 3 LaFave, Substantive Criminal Law (2d ed. 2003) § 20.3(a), pp. 996–997.)" (*Gomez, supra*, at p. 254, fn. 2.)

As stated, the language of Penal Code section 211 has remained unchanged since 1872. (See Pen. Code, § 211; Stats. 1872, ch. 4, p. 98.) The plain language of the law directs that when a theft is accomplished "by means of force[,]" a robbery has occurred. (Pen. Code, § 211.) The language omits any reference to a specific intent to achieve any further consequence.

To support its conclusion that a secondary mens rea, regarding the thief's specific intent to use force to commit the theft, the Court of Appeal quotes this Court for the proposition that "[T]he act of force or intimidation by which the taking is accomplished in robbery *must be motivated by the intent to steal . . .*" (Opinion at p. 17, emphasis original, quoting *People v. Green* (1980) 27 Cal.3d 1, 54.) However, a closer examination of this Court's precedents, including *People v. Bolden* (2002) 29 Cal.4th 515, reveals that this Court was not directing that there must be a secondary specific intent to steal by use of force.

Significantly, both *Green* and *Bolden* addressed whether the thief's taking of the victim's property was incidental to the murder of the victim or whether the murder was committed to facilitate the theft such that robbery occurred. (See *Bolden, supra* at pp. 555–556; *Green, supra*, at p. 54.) Notably, in both cases, the phrase "motivated by intent to steal" appears to address the thief's motive for killing the victim. (See *Bolden, supra* at pp. 555–556; *Green, supra*, at p. 54.) If the thief's motive for killing was simply to kill then no robbery occurred even if the killer subsequently elected to steal from his deceased victim. Whereas, if the motive for the act resulting in the killing was to accomplish a theft from the victim, then a robbery occurred. (See *Bolden, supra*, at p. 556; *Green, supra*, at p. 54.) As such, this Court's examination of *Bolden*'s and *Green*'s motive—notably, motive is not an element of a crime (Cf. *People v. Romo* (1975) 14 Cal.3d 189, 196)—was relevant to determine solely whether their intent to steal arose before or after each initiated the act that caused force to the victim. Therefore, the language "motivated by the intent to steal," involved the necessity of assuring that the killer's act of force was coupled with the intent to steal, in order to satisfy the requirement of Penal Code section 20 of a joint operation of act and intent (mens rea). These discussions did not address a second or create a second mens rea in the crime of robbery, and certainly not a specific intent.

Such a conclusion appears consistent with *Green*. This Court provided that "the act of force or intimidation by which the taking is accomplished in robbery *must be motivated by the intent to steal in order to satisfy the requirement of section 20*<sup>2</sup>: if the larcenous purpose does not arise until after the force has been used against the victim, there is no "joint operation of act and intent" necessary to constitute robbery." (*Green, supra*, at p. 54, emphasis added.) Accordingly, *Green* provides that, in order for a robbery to occur, the thief's intent to steal must join with his act that caused force against his victim. (See *Ibid.*) The thief's "motive" for committing the act that caused the force is therefore relevant to a temporal or causal analysis whether the act of force and intent to steal co-existed and were related, but not to an intent or mens rea.

This Court, in *Bolden* and *Green*, did not rule that a secondary mens rea exists in the crime of robbery which demands proof that the robber intended to use force to accomplish the theft—a specific intent. Those holdings involved a temporal or causal analysis for purposes of assuring that the thief's intent to steal preexisted his act of force against the victim. From a causation perspective, it reasonably follows that, to elevate a theft to a robbery, the force or fear must be the means by which the taking (and retention and escape) is accomplished. Or, as the jury was instructed here, appellant must have "used force" to take the stolen property. (2 CT 300.)

Here, the facts clearly demonstrate that appellant's intent to steal preceded his application of force against the victim and directly contributed to his retention and escape with the property, thus fulfilling the temporal and causal requirements of the crime of robbery. The facts further demonstrate that appellant was aware of his use of force against the victim as he applied it and that he capitalized on that use of force in order to escape with the victim's stolen property.

In his trial testimony, appellant admitted that he was contemporaneously aware of his application of force against his victim. Specifically, appellant testified that immediately prior to hitting the victim, traveling at a speed of up to 30 miles per hour, he observed the victim some 10 to 12 feet in front of the vehicle as she held out her hand. (5 RT 902, 907.) Appellant conceded that he thought he heard her yell "stop." (5 RT 902, 907.) Appellant claimed that he swerved to avoid her. (5 RT 896.) Appellant testified that, nevertheless, his evasive maneuver failed and he hit and ran over the victim. (5 RT 903, 912.) Appellant admitted, "I knew that I hit her." (5 RT 913.) Yet, appellant drove on in the stolen car.

Appellant's act of driving at and over the victim constituted force against the property owner, as it directly aided his retention of, and escape with the victim's property. Indeed, his act directly overcame the victim's effort to recover her property by standing in front of her car, holding out her hand and commanding Anderson to "stop"—her resistance to the theft itself. And, once Anderson struck and ran over the victim, which he admitted he realized he had done,

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<sup>2</sup> Penal Code section 20 provides: "In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence."

he capitalized on the force he had knowingly applied and drove on in the stolen car, making good his escape.

A robbery can be accomplished even if the property was peacefully acquired, if force was "used" to carry it away. (*People v. Gomez* (2008) 43 Cal.4th 249, 255; *People v. Anderson* (1966) 64 Cal.2d 633, 638.) Here, appellant admittedly possessed the intent to steal, and acknowledged that he applied force to the property owner and that he was aware of that application of force as he applied it. At that juncture, given that those circumstances were known to him, appellant was confronted with a choice: Either stop, as the victim had commanded, and surrender the property—or take advantage of his application of force against the victim and flee with the stolen property. Had appellant stopped and surrendered the property, no robbery would have occurred because there would not have been any taking accomplished by force. Appellant fled in the stolen car after striking the victim, however, and therefore completed the crime of robbery.

Finally, in its request for supplemental briefing, this Court further instructed the parties to address "whether the jury was informed that the prosecution was required to prove defendant intended to use force against the victim or to cause the victim to experience fear." As to the force component of the "force or fear" element of robbery, the jury was properly instructed that, in order to find appellant guilty of robbery, it was necessarily required to find beyond a reasonable that "[t]he defendant used force or fear to take the property or to prevent the person from resisting." (2 CT 300 [CALCRIM 1600].) The standard CALCRIM 1600 instruction for robbery, based on one approved by this Court, "adequately explain[s]" the crime of robbery. (See *People v. Bolden, supra*, 29 Cal.4th at p. 556 [citing CALJIC No. 9.40, the predecessor to CALCRIM 1600].)

Sincerely,



JAMES H. FLAHERTY III  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

JF:ar

**DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE**

Case Name: **People v. Anderson**

No.: **S175351**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 24, 2010, I served the attached SUPPLEMENTAL LETTER BRIEF by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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*Attorney for Appellant Paul D. Anderson*  
(2 Copies)

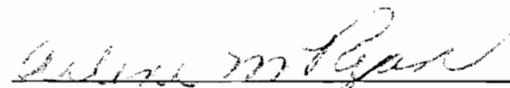
The Honorable Rod Pacheco  
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and I furthermore declare, I electronically served a copy of the above document from Office of the Attorney General's electronic notification address [ADIEService@doj.ca.gov](mailto:ADIEService@doj.ca.gov) on September 24, 2010, to Appellate Defenders, Inc.'s electronic notification address [eservice-criminal@adi-sandiego.com](mailto:eservice-criminal@adi-sandiego.com).

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 24, 2010, at San Diego, California.

Arlene M. Ryan  
\_\_\_\_\_  
Declarant

  
\_\_\_\_\_  
Signature