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Clerk of Supreme Court
350 McAllister St.
San Francisco, CA 94102-7303

**SUPREME COURT
FILED**

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Frederick K. Ohlrich Clerk

People v. Paul Anderson, S175351

Deputy

Dear Sir:

Pursuant to the Court's order of July 28, as extended on August 5, 2010, appellant Anderson respectfully submits the following supplemental reply letter brief.

The People argue that the secondary intent discussed in the Court of Appeal's opinion is really a specific intent. (People's supp. brief at p. 2 ("the court's analysis firmly demonstrates that its proposed secondary mens rea is one of specific criminal intent").) To the contrary, the intent is a true general intent because it requires only "an intent to do the act that causes the harm." (People v. Atkins (2001) 25 Cal.4th 76, 86.) If Anderson had intended to strike the victim as he drove out the gate in order to retain possession of the property, he would have satisfied this general intent, without any further showing of "an intent to do a further act or achieve a future consequence."

(Atkins at p. 86.)

The fact that the willful use of force or fear may be purposeful (here, motivated by the objective of getting or retaining the property) does not transform the crime into a specific intent crime. For example,

a defendant who commits an assault contemplates or purposes to consummate a battery, and yet assault is a general-intent crime. (People v. Colantuono (1994) 7 Cal.4th 206, 214.) The intent to commit the battery is subsumed within the general intent. (Id. at p. 217 (“If one commits an act that by its nature will likely result in physical force on another, the particular intention of committing a battery is thereby subsumed”).)

As another example, the hate-crime statute provides for a sentencing enhancement if the crime is motivated by the victim’s race or other qualifying characteristic. (Pen. Code, § 422.75, incorporating definition of Pen. Code, § 422.55.) This statute requires only general, not specific, intent even though the defendant acts purposefully because of the victim’s characteristic: the statute “simply increases the punishment for a felony *motivated* by prohibited bias, without reference to the perpetrator’s seeking any further consequence.” (People v. Superior Court (Aishman) (1995) 10 Cal.4th 735, 740 (italics in original).) Thus, the requirement of a purpose or motive does not transform the element into one requiring a specific intent. As in Aishman, the fact that defendant willfully uses force for the purpose or motive of retaining possession of the property does not mean he is “seeking any further consequence,” and therefore does not imply a requirement of specific intent.

In any event, for purposes of Anderson’s case, it is not necessary to resolve whether the secondary general intent of willfulness requires a purpose to retain possession of the property. All that matters is whether the act was accidental, that is, whether defendant harbored “a

purpose or willingness to commit the act.” (People v. Atkins, *supra*, 25 Cal.4th at p. 85.) If Anderson struck the victim without intending to do so, his use of force could not have been willful.

The People argue that “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.” (People’s supp. brief at 1.) This is erroneous on two grounds. *First*, as explained above, the willful use of force does not constitute a specific intent but only a general intent, even if the use of force must be purposeful.

Second, any clarification of the mental state required for robbery would have no effect at all on the vast majority of robbery cases. In almost all robberies, even *Estes* robberies, it is obvious that the defendant is intentionally using force or fear: he points a gun at the victim, or pulls out a gun when he is being chased, or wrests the loot away from the struggling victim. The issue raised in Anderson’s case affects only the highly unusual scenario of an *Estes* robbery in which the escaping thief accidentally collides against the owner of the property. So rare is this scenario that no reported California opinion has ever squarely addressed it.

In that respect, this case is similar to People v. Williams (2001) 26 Cal.4th 779, in which this Court clarified the mental state required for the general-intent crime of assault. As Williams itself observed:

Nonetheless, any instructional error is largely technical and is unlikely to affect the outcome of most assault cases, because a

defendant's knowledge of the relevant factual circumstances is rarely in dispute.

(Id. at p. 790.) So, too, clarification of the mental state for robbery is “unlikely to affect the outcome of most” robbery cases because the defendant's intentional use of force “is rarely in dispute.” The specter of wholesale reversals is illusory.

The People argue that this Court's opinions requiring that the force or fear be applied for the purpose of accomplishing the taking (e.g., People v. Bolden (2002) 29 Cal.4th 515, 556) “address a causal matter, and not one of intent.” (People's supp. brief at p. 1.) According to the People:

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.

(People's supp. brief at 4.)

In effect, the People merely relabel “intent” as “cause.” It is hard to see how the intent that accompanies the use of force or fear is not an intent but rather a “cause,” and it is hard to see what purpose is served by such relabeling. In this Court's opinions, Bolden, supra, and People v. Green (1980) 27 Cal.3d 1, the mental state at issue was a true intent because it was a state of mind that *accompanied* the use of force or fear. For example, in Bolden, this Court rejected defendant's proffered instruction because it erroneously “preclude[d] a robbery conviction when the defendant has formed the intent to steal after beginning to

apply force but before the application of force is concluded.” (Id. at p. 556.) Bolden’s holding is thus inconsistent with the People’s interpretation that Bolden “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.” (People’s supp. brief at p. 4.) Under Bolden, it is not necessary that the intent to steal “preexist”; rather, it can arise after the use of force has begun, so long as it arises before the use of force ends. Put another way, if (as the People appear to argue) “cause” implies some earlier, preexisting mental state, it cannot be synonymous with “intent” as used in Bolden.

Similarly, in Green, the Court specifically relied on Penal Code section 20, which requires the “union, or joint operation of act and intent.” (See Green at p. 54.) Green therefore involves a true intent, for otherwise the reliance on section 20 would be inexplicable.

Finally, the People argue that the error was harmless in this case because Anderson “acknowledged that he applied force to the property owner and that he was aware of that application of force as he applied it.” (People’s supp. brief at p. 5.) The issue, however, is whether he *willfully* applied force, that is, whether the force was nonaccidental. Anderson never admitted that he deliberately ran over the victim. As explained at length in the Court of Appeal’s opinion and in Anderson’s brief on the merits in this Court, the overwhelming evidence showed that he did not willfully apply force, but rather tried to swerve away from the victim when he saw her. (See Anderson’s answer brief on merits at pp. 46-49; Court of Appeal opn. at pp. 19-24.) As the Court of

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Appeal aptly observed: “There was substantial, if not overwhelming, evidence to support Anderson’s defense theory of accident.” (Opn. at 23.)

Respectfully submitted,

Richard A. Levy (SBN 126824)
Appointed counsel for Paul Anderson

CERTIFICATION OF WORD COUNT

I certify that the word count of this computer-produced document, calculated pursuant to rule 8.360(b) of the Rules of Court, is: 1314 words.

Richard A. Levy

**PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 21535 Hawthorne Blvd., Suite 200, Torrance, CA 90503-6612. On the date of execution set forth below, I served the foregoing document described as:

APPELLANT'S SUPPLEMENTAL REPLY LETTER BRIEF

on all parties to this action and the trial court by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Attorney General of California
Attn: James Flaherty, Esq.
P.O. Box 85266
San Diego, CA 92186-5266

and placing such envelopes with postage thereon fully prepaid in the United States mail at Torrance, California. Executed on October 7, 2010, at Torrance, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
