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ADVANCE SHEET HEADNOTE
May 16, 2011

No. 09SC218, Weinstein v. People Criminal Law -- Burglary

In this companion case to Oram v. People, No. 09SC224 (Colo. May 16, 2011), the supreme court affirms the opinion of the court of appeals. The court holds that the common law bonding agent's privilege does not exist in Colorado. Accordingly, Weinstein and his partner Oram could not rely on that privilege to enter a private residence in search of a bonded individual. Because Weinstein and Oram represented that they were law enforcement officers in order to gain entry into the private residence, there was sufficient evidence that they knowingly entered the private residence unlawfully. Lastly, because none of the named victims of the burglary consented to the entry, the court holds that the trial court appropriately rejected an affirmative defense instruction on the issue of consent.

SUPREME COURT, STATE OF COLORADO 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202 Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 07CA34	Case No. 09SC218
<p>Petitioner:</p> <p>Devon Scott Weinstein,</p> <p>v.</p> <p>Respondent:</p> <p>The People of the State of Colorado.</p>	
<p style="text-align: center;">JUDGMENT AFFIRMED EN BANC May 16, 2011</p>	

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JUSTICE RICE delivered the Opinion of the Court.

In this case, petitioner, bonding agent Devon Scott Weinstein, and his partner and codefendant, bonding agent Jason Richard Oram, were charged with second degree burglary and felony menacing stemming from their entrance into a private residence in search of a bonded individual. Weinstein and Oram rely on the common law bonding agent's privilege to justify their entry into the home and contend that the jury instructions did not properly describe that privilege. Further, Weinstein and Oram argue that they did not know that their entry into the private residence was unlawful, therefore making it impossible for them to satisfy the knowingly element of second degree burglary. Lastly, Weinstein and Oram argue that the trial court incorrectly denied their jury instruction regarding consent.

For the reasons described in the companion case, Oram v. People, No. 09SC224 (Colo. May 16, 2011), we hold that the common law bonding agent's privilege does not exist in Colorado and reject Weinstein's challenges to the tendered jury instructions. Also, as described in Oram v. People, we hold that there was sufficient evidence that Weinstein and Oram knew that their entry was unlawful to satisfy the knowingly element of second degree burglary. Likewise, we hold that the trial court correctly rejected Weinstein and Oram's tendered instruction on the issue of consent. Therefore, we affirm the court of appeals.