IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 67349-1-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	UNPUBLISHED OPINION
FRANKLIN LOUIS HUTTON,	)	
	)	
Appellant.	)	FILED: September 24, 2012

PER CURIAM. Franklin Hutton appeals his conviction for second degree assault, arguing that he was denied due process because the court's "to-convict" instruction omitted "the element that the force used was unlawful."[1] Br. of Appellant at 1. But the State points out, and Hutton does not dispute, that his proposed "to-convict" instruction contained the same flaw. Any error was thus invited. City of Seattle v. Patu, 147 Wn.2d 717, 720, 58 P.3d 273 (2002) (invited error doctrine applies even to cases where the to-convict instruction allegedly omitted an essential element of the crime). And contrary to Hutton's assertions, his trial counsel did not raise this objection to the court's to-convict instruction below. Accordingly, review of the alleged error is waived.

Affirmed.

For the court:

Cox, J.

Ellington, J.

[1] We note that the Supreme Court rejected a similar argument in State v. Hoffman, 116 Wn.2d 51, 109, 804 P.2d 577 (1991) (State's burden of proving absence of self defense need not be included in "to convict" instruction; preferred method is to give jury a separate self-defense instruction discussing the defense and the State's burden).