

COA No. 32514-8-III

FILED
Nov 30, 2015
Court of Appeals
Division III
State of Washington

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN CAMERON IRA YOUNG,

Appellant.

BRIEF OF APPELLANT

Kenneth H. Kato, WSBA # 6400
Attorney for Appellant
1020 N. Washington St.
Spokane, WA 99201
(509) 220-2237

TABLE OF CONTENTS

I. ASSIGNMENT OF ERROR.....1

 1. John Young received ineffective assistance of counsel, who stipulated to the admission of his confession and thereby so prejudiced his client that the charge must be dismissed or a new trial granted.....1

Issue Pertaining to Assignment of Error

 A. Did defense counsel render ineffective assistance by stipulating to admission of Mr. Young’s confession when there was no independent evidence apart from his confession, under the corpus delicti rule, sufficient to establish all the elements of first degree murder? (Assignment of Error 1).....1

II. STATEMENT OF THE CASE.....1

III. ARGUMENT.....6

 A. Mr. Young received ineffective assistance of counsel, who stipulated to the admission of his confession when there was no independent evidence apart from the confession, under the corpus delicti rule, sufficient to establish all the elements of first degree murder.....6

IV. CONCLUSION.....11

TABLE OF AUTHORITIES

Table of Cases

State v. Ashurst, 45 Wn. App. 48, 723 P.2d 1189 (1986).....8

State v. Aten, 130 Wn.2d 640, 927 P.2d 210 (1996).....8, 9

<i>State v. Brockob</i> , 159 Wn.2d 311, 150 P.3d 59 (2006).....	8, 9
<i>State v. Cobelli</i> , 56 Wn. App. 921, 924, 788 P.2d 1081 (1989).....	8, 10
<i>State v. Dow</i> , 168 Wn.2d 243, 227 P.3d 1278 (2010).....	9, 10
<i>State v. Green</i> , 182 Wn. App. 133, 328 P.3d 988, <i>review denied</i> , 181 Wn.2d 1019 (2014).....	7
<i>State v. Hamrick</i> , 19 Wn. App. 417, 576 P.2d 912 (1978).....	8
<i>State v. Hendrickson</i> , 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996).....	7
<i>State v. Jeffries</i> , 105 Wn.2d 398, 418, 717 P.2d 722, <i>cert. denied</i> , 479 U.S 922 (1986).....	7
<i>State v. McFarland</i> , 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995).....	7
<i>State v. Ray</i> , 130 W.2d 673, 926 P.2d 904 (1996).....	8
<i>Strickland v. Washington</i> , 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed.2d 674 (1984).....	6, 7, 11

Statutes

RCW 9A.32.030(1)(a).....	11
--------------------------	----

I. ASSIGNMENT OF ERROR

1. John Young received ineffective assistance of counsel, who stipulated to the admission of his confession and thereby so prejudiced his client that the charge must be dismissed or a new trial granted.

Issues Pertaining to Assignment of Error

A. Did defense counsel render ineffective assistance by stipulating to admission of Mr. Young's confession when there was no independent evidence apart from his confession, under the corpus delicti rule, sufficient to establish all the elements of first degree murder? (Assignment of Error 1). .

II. STATEMENT OF THE CASE

Mr. Young was charged by amended information with first degree murder with a firearm enhancement. (CP 82). Before trial, defense counsel stipulated to the admission of all statements made by Mr. Young while he was in police custody. (4/11/14 RP 42). In his interview, he confessed and admitted killing the victim, J.S. (*Id.* at 43). The State acknowledged that any statements made by Josh Hunt. (known as RJ), who was involved in killing J.S., could not be used against Mr. Young. (*Id.* at 46).

Justin Danner was working at the Desert Food Mart on July 4, 2013, when a distraught Mr. Young came in around 8 a.m., needing to call 911 because he saw someone get shot. (4/16/14 RP 99-100, 107). Law enforcement responded and the suspect, RJ Hunt, was outside in the parking lot when he was arrested. (*Id.* at 130-31).

Detective Scott Runge responded to the homicide report the morning of July 4, 2013. (4/16/14 RP 142). He went to the Desert Food Mart in Benton City, where he saw Mr. Young telling other deputies RJ had shot somebody. (*Id.* at 145). The detective took him to the location where J.S. was located. (*Id.* at 146-48). Apparently, the victim owed RJ some money for drugs. (*Id.* at 162).

Officer Scott Lien was dispatched to a homicide report on July 4, 2013. (4/16/14 RP 190). Near the Horn Rapids ORV park, J.S. was found deceased, lying in the sand dunes. (*Id.* at 191-92). Mr. Young told the officer, "I didn't have to do it." (*Id.* at 195).

Mark Allen looked for a backpack tossed into the river. (4/16/14 RP 211). He found it. (*Id.* at 210). Detective Dean Murstig, the crime scene investigator, photographed the area where J.S. was found. (*Id.* at 226). There looked to be two other shoe patterns besides J.S.'s. (*Id.* at 245-46). There were three sets of

footprints going towards where J.S. was found and only two sets going away from his body. (*Id.* at 259-60). One set was consistent with J.S.'s shoes. (*Id.* at 262). Other shoes were found in the backpack from the river. (*Id.*). RJ had been wearing Adidas shoes and Mr. Young Nike shoes when J.S. was killed. (*Id.* at 328-333). The backpack also contained ammunition, a plastic holder for ammunition, and shell casings. (*Id.* at 303-04). A firearm was located in a metal can in the backpack. (*Id.* at 307).

The detective found two bullets in the sand, one pristine and the other deformed. (4/18/14 RP 292-92). There was a hole in J.S.'s left front shirt pocket and his chest. (*Id.* at 321-22). Another hole was under the bill and the front of J.S.'s cap. (*Id.* at 322-23). J.S. was shot and died of gunshot wounds. (*Id.* at 335). Detective Murstig had no doubt Mr. Young was at the scene of the killing and had left. (*Id.* at 362). He took the gun and shot J.S. in the head. (*Id.* at 362-63). J.S. had three entrance wounds and one exit wound. (*Id.* at 363). The gunshot wound through-and-through was in the head area. (*Id.* at 364). Three holes were in the head and one in the chest. (*Id.* at 366). Mr. Young told Detective Athena Clark that RJ shot J.S. once in the chest and three times in the

head. (*Id.* at 369). J.S. stopped twitching when Mr. Young shot him in the head. (*Id.* at 371).

On July 4, 2013, Detective Jeff Bickford took Mr. Young to the police station interview room. (4/18/14 RP 463-64). The detective began to interview him and Detective Athena Clark showed up later. (*Id.* at 465-66). Mr. Young showed Detective Bickford how he aimed and fired into J.S.'s head in the temple-cheek region. (*Id.* at 468).

Detective Clark had known Mr. Young before when he was a student at Richland High School. (4/21/14 RP 652). She assisted in the interview with him. (*Id.* at 654). Mr. Young interjected the terms humane and inhumane with respect to his decision to fire the last round into J.S. after seeing him suffering. (*Id.* at 658). He said he shot J.S. in the head. (*Id.* at 658-59). Mr. Young confessed to the crime. (*Id.* at 704). Detective Clark testified Mr. Young told her he did not aggressively take the gun from anyone. At her prompting, he indicated he was going to put J.S. out of his misery. (*Id.* at 717-21). A video of the interview with Mr. Young was played to the jury in its entirety. (*Id.* at 670, 688).

The detective said Mr. Young told her he froze up before firing. (4/21/14 RP 721). He told her RJ shot J.S. three times. (*Id.*

at 722). Mr. Young shot J.S. in the head on the left side near the temple-cheek area. (*Id.* at 730). He said J.S. was twitching and after he shot him, there was no more twitching. (*Id.* at 730-31). Mr. Young made sure he had stopped twitching and then walked away within 3-5 seconds. (*Id.* at 739-41).

In the defense case, Detective Murstig confirmed a five-shot revolver was used in the killing and five bullets had been recovered: two by J.S.'s head area in the sand, two in his body, and one by the road. (4/23/14 RP 802-06). He said it was extremely likely one shot missed J.S.'s head. (*Id.* at 821). RJ shot when J.S. was standing up and then went down. (*Id.* at 839). Mr. Young shot J.S. while he was on the ground. (*Id.*). RJ shot once to the chest and twice to the head, followed by Mr. Young shooting J.S. once in the head. (*Id.* at 857).

In closing, the State argued as to the requisite intent from Mr. Young's confession:

I looked at his head, and I pointed at him. You know, I didn't do it at first. I didn't want to do it, but I had to, man. I thought about it. You know, I thought about it. I couldn't do – do it. I couldn't just leave him there, not knowing if he was dead or alive. . .

So, I had to do it for my own sake, man, for his own sake, but this is – get it over. (4/24/14 RP 965).

Again pointing to the confession, the State noted Mr. Young acknowledged he had to cock the trigger and pull the hammer back on the gun. (*Id.* at 966). The argument then again quoted from his confession:

I had to think about it. You know, I had to do that. So, you know, I had to think about it. You know, I had that fucking choice to do it, and I fucking did it, man. That's why I'm so mad, and then I think, "Why couldn't I just not have done that?" and that's just fucking let RJ do his thing, man. I don't know, but I just couldn't do it. (*Id.*).

The jury convicted Mr. Young of first degree murder with a firearm enhancement. (CP 214, 216). He was sentenced to 372 months, including the 60-month enhancement. (CP 220). This appeal follows. (CP 238).

III. ARGUMENT

A. Mr. Young received ineffective assistance of counsel, who stipulated to the admission of his confession when there was no independent evidence apart from the confession, under the corpus delicti rule, sufficient to establish all the elements of first degree murder.

To prove ineffective assistance of counsel, a defendant must show (1) his counsel's performance was deficient and (2) the deficient performance prejudiced him. *Strickland v. Washington*,

466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed.2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). A lawyer's performance is deficient if he made errors so serious that he was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Prejudice requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial. *State v. Jeffries*, 105 Wn.2d 398, 418, 717 P.2d 722, *cert. denied*, 479 U.S. 922 (1986). But the defendant need not show that counsel's deficient performance more likely than not altered the outcome of the case. *Strickland*, 466 U.S. at 693. Legitimate tactics or strategy will not support a claim of ineffective assistance. *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996).

Here, defense counsel did not contest the admissibility of his client's confession, but rather stipulated to its entirety. In light of the corpus delicti rule, the decision to stipulate to admission of the confession was ineffective assistance as there was no independent evidence sufficient to establish all the elements of first degree murder, particularly premeditated intent. See *State v. Green*, 182 Wn. App. 133, 142-43, 328 P.3d 988, *review denied*, 181 Wn.2d 1019 (2014).

Under the corpus delicti rule, a defendant's extrajudicial statements may not be admitted into evidence without independent proof of the existence of every element of the crime charged. *State v. Ashurst*, 45 Wn. App. 48, 723 P.2d 1189 (1986); *State v. Cobelli*, 56 Wn. App. 921, 924, 788 P.2d 1081 (1989). In a homicide case, the corpus delicti usually involves two elements: (1) the fact of death and (2) a causal connection between the death and a criminal act. *State v. Aten*, 130 Wn.2d 640, 655, 927 P.2d 210 (1996). Under the corpus delicti rule, the defendant's incriminating statement alone is insufficient to establish a crime took place. *State v. Brockob*, 159 Wn.2d 311, 328, 150 P.3d 59 (2006).

The independent proof of the crime charged need not be sufficient to support a conviction, but the State must present "evidence of sufficient circumstances which would support a logical and reasonable inference" that the crime occurred. *State v. Ray*, 130 Wn.2d 673, 678-79, 926 P.2d 904 (1996); *State v. Hamrick*, 19 Wn. App. 417, 576 P.2d 912 (1978). Moreover, the corroborative evidence must be to the charged crime, not just any crime. *Brockob*, 159 Wn.2d at 329.

The corpus delicti rule focuses on the sufficiency of the independent evidence other than the defendant's confession. *State*

v. Dow, 168 Wn.2d 243, 249, 251, 227 P.3d 1278 (2010). The rule's purpose is to ensure other evidence supports the defendant's statement and satisfies the crime's elements. *Id.* To determine the sufficiency of independent evidence under the rule, the truth of the State's evidence is assumed and all reasonable inferences are viewed in a light most favorable to the State. *Aten*, 130 Wn.2d at 656. The independent evidence must only provide prima facie corroboration of the defendant's statement, *i.e.*, the independent evidence must support a logical and reasonable inference the crime has occurred. *Brockob*, 159 Wn.2d at 328. But the State must still prove every element of the crime charged by evidence independent of the defendant's statement. *Dow*, 168 Wn.2d at 254.

The State had no evidence independent of Mr. Young's confession to prove every element of first degree murder. Instruction 9 stated "[a] person commits the crime of murder in the first degree when, with a premeditated intent to cause the death of another person, he causes the death of such person or of a third person." (CP 200). The to-convict instruction stated the elements of the offense:

To convict the defendant of the crime of murder in the first degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 4th day of July, 2013, the defendant acted with intent to cause the death of [J.S.];
 - (2) That the intent to cause the death was premeditated;
 - (3) That [J.S.] died as a result of the defendant's acts;
- and
- (4) That any of those acts act occurred in the State of Washington. (CP 201).

Other than Mr. Young's confession that he froze and had to think about it before shooting, the State produced absolutely no independent evidence that he acted with premeditated intent to cause J.S.'s death. Without having such evidence apart from the confession, the corpus delicti rule was violated as there was no prima facie corroboration of Mr. Young's statement as to circumstances tending to show premediated intent. Absent any independent evidence, however, the State failed to prove every element of the crime charged. *Dow*, 168 Wn.2d at 254. The corpus delicti rule was violated and the charge should have been dismissed. *Cobelli, supra*.

Citing trial strategy, defense counsel stipulated to the admission of Mr. Young's confession. Under the circumstances, however, there can be no claim of legitimate trial strategy when

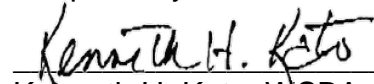
counsel's decision relieved the State of not only proving the premeditated intent element of first degree murder, but also that Mr. Young's acts caused J.S.'s death. RCW 9A.32.030(1)(a). In essence, counsel conceded guilt as no independent evidence proved it apart from the confession. This was deficient performance that so prejudiced Mr. Young that it deprived him of the defense based on the corpus delicti rule. *Strickland, supra*. The first degree murder conviction must be reversed and the charge dismissed or a new trial granted.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Young respectfully urges this Court to reverse his conviction and dismiss the charge or remand for new trial.

DATED this 30th day of November, 2015.

Respectfully submitted,



Kenneth H. Kato, WSBA #6400
Attorney for Appellant
1020 N. Washington
Spokane, WA 99201
(509) 220-2237

CERTIFICATE OF SERVICE

I certify that on November 30, 2015, I served a copy of the Brief of Appellant by USPS on John Young, # 364180, 1830 Eagle Crest Way, Clallam Bay, WA 98326; and by email, as agreed, on Andrew Miller at prosecuting @co.benton.wa.us .

Kenneth H. Kato