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Division II
State of Washington
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NO. 53141-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

TODD RICHARD MARJAMA JR, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-01399-6

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. The State presented sufficient evidence that Marjama's crime occurred within sight or sound of the victim's child in accordance with the statutory aggravating circumstance alleged.**
- II. The trial court's instructions to the jury did not relieve the State of its burden to prove beyond a reasonable doubt that Marjama's crime occurred within sight or sound of the victim's child.**

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Todd Richard Marjama Jr. was charged by second amended information with Murder in the First Degree and Assault in the First Degree for shooting his firearm on or about March 18, 2018, which resulted in the death of his wife, Amanda Marjama, who, at the time she was shot, was holding the couple's two-year-old child. CP 126-27. Each count included an allegation of domestic violence and a firearm enhancement. CP 126-27. The murder count also included the aggravating circumstance that the offense occurred "within sight or sound of the victim's or the offender's minor children under the age of eighteen years." CP 126.

The case proceeded to a jury trial before the Honorable Gregory Gonzales, which commenced on November 26, 2018 and concluded on

December 5, 2018. RP 274-1591. The jury returned its verdicts on December 6, 2018. RP 1711-13. The jury hung on Murder in the First Degree, convicted Marjama of Manslaughter in the First Degree, a lesser included offense proposed by the State, to include the firearm enhancement, the domestic violence allegation, and the “sight or sound” aggravator, and acquitted him of Assault in the First Degree. CP 173-74, 176, 178-180; RP 1513-15, 1711-1723. The trial court sentenced Marjama to an exceptional sentence of 198 months of total confinement. CP 255; RP 1791. Marjama filed a timely notice of appeal. CP 251.

B. STATEMENT OF FACTS

Pursuant to RAP 10.3(b), and for the purposes of this responsive brief only, the State is satisfied with Marjama’s “Statement of Facts and Prior Proceedings.” Brief of Appellant at 3-5. While the State would emphasize certain facts more and others less and draw some different inferences from the evidence, Marjama’s statement of facts accurately summarizes the evidence relating to the underlying offense for which Marjama was found guilty as well as the procedural history of the case. The State will, however, include some additional facts relevant to the “sight or sound” of “minor children” aggravator—the legal issue raised by Marjama—before proceeding to the argument section.

Prior to Marjama firing the fatal bullet, he was engaged in a verbal argument with Amanda.¹ Marjama was located in the master bedroom while Amanda was in the closed, master bathroom holding the couple's two-year-old child A.M. RP 582, 660-62, 857, 863, 1418-19. When Marjama fired his gun, the bullet went through his hand, through the bathroom door, and struck Amanda in the head. RP 1418-19. After being struck, Amanda immediately fell to the ground and died. RP 857, 861, 863.

Amanda's aunt, Helen Lewis, rushed to the bedroom after hearing the gunshot and found a wounded Marjama. RP 570-72. Once Lewis escorted Marjama out of the bedroom, she returned and heard crying coming from inside the bathroom. RP 575-76. Lewis's knocks on the bathroom door received no response and she was initially unable to get the door open. RP 577. Lewis began to hear A.M. screaming from the bathroom so she kept working at the door and eventually got it to barely open. RP 577. She then observed that Amanda had fallen into the door, that her body was wedging it shut, that she had a bullet hole in the middle of her head, and that blood was all over the place. RP 577-58. Lewis screamed and ran from the room without retrieving the child. RP 578-580.

¹ The State will refer to Amanda Marjama as Amanda for the purpose of providing clarity. No disrespect is intended.

Lewis later returned to the bathroom with Beatrice Kamp, Amanda's mother.² RP 580, 660. When Kamp arrived she observed that the bathroom door was slightly open and heard A.M. crying. RP 660. After confirming that her daughter did not have a pulse, Kamp, with Lewis's help, pushed and moved Amanda's body so that she (Kamp) could open the door just enough to pull A.M., who was covered in blood, through the opening. RP 582, 661-62. Kamp got A.M. out of the bathroom and had her go to "grandma's house." RP 662.

At Marjama's sentencing, numerous family members and friends of Amanda provided oral and written statements to the trial court. RP 1732-1749. Many of them discussed how A.M. was traumatized by her mother's death and/or her presence during the crime. RP 1733-35, 1740, 1742-46, 1748. For example, A.M. refuses to use the master bathroom in her grandmother's house (the house has the same floor plan as Amanda's, but in reverse) unless her grandmother stands next to her and when playing with baby dolls and Barbies, A.M. talks about killing, death, and her mom being dead. RP 1744, 1748.

² Beatrice Kamp identified herself as Beatrice Diaz during the sentencing hearing. RP 1740.

ARGUMENT

I. The State presented sufficient evidence that Marjama's crime occurred within sight or sound of the victim's child in accordance with the statutory aggravating circumstance alleged.

Evidence is sufficient to support a conviction if, when viewed in a light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Salinas*, 119 Wn.2d at 201. This same test applies for determining whether the evidence was sufficient to support a jury's finding of an aggravating circumstance, i.e., whether after viewing the evidence in the light most favorable to the State, any rational trier of fact could have made the finding beyond a reasonable doubt. *State v. Gordon*, 172 Wn.2d 671, 680-81, 260 P.3d 884 (2011); *State v. Zigan*, 166 Wn.App. 597, 601-02, 270 P.3d 625 (2012).

Marjama argues that the State presented insufficient evidence to prove that his offense occurred within "sight or sound" of the victim's "minor children under the age of eighteen years." Br. of App. at 6-7; RCW 9.94A.535(3)(h)(ii). Marjama's argument is not premised on a claim that his crime did not occur within "sight or sound" of his and Amanda's child

A.M.; rather Marjama claims that the State failed to present sufficient evidence of the aggravator because his crime did not occur within sight or sound of more than one minor child. Br. of App. at 6-7. This argument is without merit because the statutory “sight or sound” aggravating circumstance does not require proof that the offense occurred within “sight or sound” of more than one child.

Marjama’s entire argument is that because the “sight or sound” aggravating circumstance refers to the offense occurring within “sight or sound of the victim’s . . . minor *children*,” and the State only presented evidence that the offense happened within the “sight or sound” of *one minor child*, A.M., that the State presented insufficient evidence of the aggravating circumstance. RCW 9.94A.535(3)(h)(ii) (emphasis added); Br. of App. at 6-7. But this argument fails to contend with the fact that by statute “[w]ords . . . in the singular shall include the plural; and in the plural *shall* include the singular.” RCW 9A.04.110(3) (emphasis added); RCW 1.12.050 (stating that “[w]ords importing the singular number may also be applied to the plural of persons and things; words importing the plural may be applied to the singular . . .”). This statutory command, or general principal of statutory construction, has been well accepted by our Courts since at least 1899. *State v. Nugent*, 20 Wn. 522, 523, 56 P. 25 (1899); *State v. Baggett*, 103 Wn.App. 564, 570-71, 13 P.3d 659 (2000);

State v. Veazie, 123 Wn.App. 392, 396, 98 P.3d 100 (2004); *see also State v. Rader*, 178 Wn.App. 1044, 2014 WL 129238, 9-10 (2014) (wherein this Court found sufficient evidence to support the “sight or sound” aggravating circumstance when the victim’s minor daughter heard the crimes happen).³ Moreover, this construction is only to be rejected when “such a construction would be repugnant to the context of the statute or inconsistent with the manifest intention of the Legislature.” *Baggett*, 103 Wn.App. at 570-571 (quoting *Queen City Sav. & Loan Ass’n v. Mannhalt*, 111 Wn.2d 503, 508, 760 P.2d 350 (1988)).

This Court rejected a similar argument in *State v. Smith*, 7 Wn.App.2d 304, 433 P.3d 831 (2019). There, the defendant argued that the free crimes aggravating circumstance—“[t]he defendant has committed multiple current offenses and the defendant’s high offender score results in *some* of the current offenses going unpunished”—could not apply where only a single offense went unpunished due to the statute using the word “some.” RCW 9.94A.535(2)(c) (emphasis added); *Smith*, 7 Wn.App.2d at 309-310. In response, this Court noted that “‘some’ may be used in the singular or plural” and that to hold otherwise would result in “unlikely or strained consequences.” *Smith*, 7 Wn.App.2d at 310-311. That

³ This Court’s opinion in *Rader* is unpublished. Pursuant to GR 14.1, this opinion “may be accorded such persuasive value as the court deems appropriate.” GR 14.1(a).

is, it would be “arbitrary to allow one crime to go unpunished but not two.” *Id.* at 311.

Here, applying RCW 9A.04.110(3), which commands that “plural *shall* include the singular,” or the general rule of statutory construction that suggests the same, this Court should hold that “children” in the “sight or sound” aggravating circumstance includes a “child.” *Baggett*, 103 Wn.App. at 570 (noting that courts “generally may construe singular words in the plural and vice versa”) (internal quotation omitted). Just as in *Smith, supra*, to hold otherwise would result in “strained consequences” given the undeniable intent of the legislature when it enacted the “sight or sound” aggravating circumstance to protect all children who witness crimes of domestic violence involving their parents. 7 Wn.App.2d at 310-311. That is, it would be arbitrary to allow one child to go unprotected unless another minor child was also present to be victimized by seeing or hearing the crime at issue. To put the absurdity of the contrary instruction more plainly, nobody who received a wedding invitation that included a prohibition stating “no children allowed” would think that the couple was allowing one child per invitee to attend the wedding—no children also means no single child just as “children welcomed” would plainly allow invitees to bring a single child.

When applying the proper construction to the “sight or sound” aggravating circumstance the State presented sufficient evidence that Marjama’s crime occurred within the “sight or sound” of Amanda’s minor child A.M. as required by the statute. This Court should affirm the jury’s finding.

II. The trial court’s instructions to the jury did not relieve the State of its burden to prove beyond a reasonable doubt that Marjama’s crime occurred within sight or sound of the victim’s child.

The jury was instructed that in order to find the “sight or sound” aggravating circumstance that it would have to find that Marjama’s offense “was committed within the sight or sound of the victim’s *child*.” CP 172 (emphasis added). Relying on his previous argument Marjama claims that this instruction “relieved the State of its burden to prove” that the offense occurred in the presence of “minor children.” Br. of App. at 7-9. This argument fails for the same reason Marjama’s other argument did—the State was only required to prove that the offense happened in the presence of at least one minor child. Thus, the jury was properly instructed. Accordingly, this Court should affirm the exceptional sentence imposed by the trial court.

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CONCLUSION

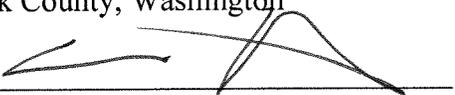
For the reasons argued above, Marjama's sentence should be affirmed.

DATED this 22nd day of October, 2019.

Respectfully submitted:

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