

FILED
September 10, 2015
Court of Appeals
Division I
State of Washington

No. 73063-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JASON M. RAMOS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Carol A. Schapira

BRIEF OF APPELLANT

THOMAS M. KUMMEROW
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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A. SUMMARY OF ARGUMENT

Ayam Ibrahim confronted Neal Blum, assaulted him, and attempted to take his backpack. At roughly the same time, Jason Ramos, who had followed Ibrahim but it was unproven the two were acting in concert, confronted Mr. Blum's friend, Jarvis Capucion, who was standing nearby. Mr. Ramos grabbed Mr. Capucion's backpack and the two struggled. Mr. Ramos stabbed Mr. Capucion several times and took his backpack. Mr. Blum retrieved a knife and stabbed Mr. Ramos and Ibrahim.

Mr. Ramos was charged with one count of first degree assault involving Mr. Capucion, and two counts of first degree robbery, one each for Mr. Capucion and Mr. Blum. The lack of any evidence proving Mr. Ramos acted either as a principal or accomplice in the robbery of Mr. Blum renders that conviction invalid and requires reversal and dismissal.

B. ASSIGNMENT OF ERROR

Mr. Ramos's conviction for the first degree robbery of Mr. Blum in count II was not supported by sufficient evidence in violation of his right to due process.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Due process requires the State prove every element of the charged offense. Mr. Ramos was charged in count II with being an accomplice to first degree robbery, which required the State to prove that he had knowledge that the principal was going to steal the backpack, and that he either aided in that theft or stood ready to aid. The evidence produced at trial failed to establish Mr. Ramos did anything regarding the theft of Mr. Blum's backpack. Is Mr. Ramos entitled to reversal of his conviction in count II with instructions to dismiss?

D. STATEMENT OF THE CASE

Friends Neal Blum and Jarvis Capucion were sitting on steps near the Mt. Baker transit center drinking beer that they had purchased nearby. RP 1332-33, 1766. Also drinking in the same area were Ayman Ibrahim, Jason Ramos and several others. RP 1923. It was unclear if Ibrahim and Mr. Ramos knew each other. RP 1923.

Ibrahim decided to attempt to break into a nearby car but was thwarted when the car's alarm went off. RP 1939. Ibrahim accompanied by Mr. Ramos ran away and descended the staircase upon which Mr. Blum and Mr. Capucion were sitting. RP 1766, 1940.

Ibrahim stopped next to Mr. Blum, who stood up and stepped aside, presumably to let Ibrahim pass. RP 1940. Ibrahim attempted to shake Mr. Blum's hand but Mr. Blum stepped back attempting to avoid Ibrahim. RP 1941.

During this confrontation between Ibrahim and Mr. Blum, Mr. Ramos was standing in front of Mr. Capucion near the bottom of the stairs. RP 1768. At some point, Ibrahim said something aloud, purportedly in Spanish. Mr. Ramos struck Mr. Capucion in the face and grabbed his backpack. RP 1340, 1768. The backpack flew onto the ground and Mr. Ramos picked it up. RP 1340. Mr. Ramos returned to Mr. Capucion and stabbed him several times. RP 1341, 1771.

At the same time, Ibrahim grabbed Mr. Blum's backpack. RP 1342. Mr. Blum threw up his hands and let the backpack go free. RP 1342. Mr. Blum heard Mr. Capucion shouting that Mr. Ramos was stabbing him and responded by arming himself with a knife from his pocket and stabbed both Ibrahim and Mr. Ramos. RP 1345-48. Ibrahim and Mr. Ramos ran a short distance away before Mr. Ramos collapsed from his wounds. RP 1951. There was no evidence of any interaction between Mr. Ramos and Ibrahim prior to Ibrahim punching Mr. Blum. RP 1787.

Mr. Ramos, Ibrahim and Mr. Capucion were taken to Harborview Hospital where Mr. Ramos and Mr. Capucion were the most seriously injured. As a result of the actions on the staircase, Mr. Mr. Ramos was charged with two counts of first degree robbery, one each for Mr. Blum and Mr. Capucion, and a count of first degree assault. CP 11-12.¹

Following a jury trial, Mr. Ramos was convicted as charged. CP 435-37.

E. ARGUMENT

The State failed to prove that Mr. Ramos was guilty of first degree robbery of Mr. Blum in count II as an accomplice to Ibrahim.

1. *The State bears the burden of proving each of the essential elements of the charged offense beyond a reasonable doubt.*

The State is required to prove each element of the crime charged beyond a reasonable doubt. U.S. Const. amend XIV; *Apprendi v. New Jersey*, 530 U.S. 466, 471, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970).

The standard the reviewing court uses in analyzing a claim of insufficiency of the evidence is “[w]hether, after viewing the evidence

¹ Ibrahim was also charged with the same offenses but, prior to trial, he plead guilty and was sentenced to one count of first degree robbery with a deadly weapon enhancement. RP 1933.

in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A challenge to the sufficiency of evidence admits the truth of the State’s evidence and all reasonable inferences that can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

2. *The State failed to prove Mr. Ramos was an accomplice to Ibrahim in count II.*

Since Mr. Ramos did not physically take Mr. Blum’s backpack or personally threaten Mr. Blum, the State’s theory at trial on count II was that Mr. Ramos aided or agreed to aid Ibrahim in taking Mr. Blum’s backpack. But the State failed to produce any evidence to support this theory, thus there was insufficient evidence presented at trial to support Mr. Ramos’s conviction on count II.

A person is guilty of robbery in the first degree if, “in the commission of a robbery or of immediate flight therefrom, he: (i) Is armed with a deadly weapon; or (ii) Displays what appears to be a firearm or other deadly weapon; or (iii) Inflicts bodily injury.” RCW 9A.56.200(1)(a). An accomplice is guilty to the same extent as the principal. RCW 9A.08.020(1)-(2). An accomplice is someone who,

“[w]ith knowledge that it will promote or facilitate the commission of the crime, he ... aids or agrees to aid such other person in planning or committing it.” RCW 9A.08.020(3). Presence and knowledge are not enough; the accomplice must associate himself with the crime charged, participate in it, and seek to make it succeed. *State v. Amezola*, 49 Wn.App. 78, 89, 741 P.2d 1024 (1987). An accomplice is not strictly liable for all acts arising from the initial crime in which he participated unless he associates himself with those acts. *State v. Roberts*, 142 Wn.2d 471, 512, 14 P.3d 713 (2000). However, an accomplice need not participate in each element of the crime or share the same mental state required of the principal. *Id.* at 502. Rather, general knowledge of “the crime” is sufficient, *id.* at 513; the accomplice need only intend to facilitate the commission of the crime by providing assistance through his presence or act. *Id.* at 502. Thus, the State was required to prove Mr. Ramos knew that his activity would promote or facilitate commission of *the* crime; Ibrahim’s robbery of Mr. Blum.

To convict Mr. Ramos as an accomplice to robbery in the first degree, the State had to prove that Ibrahim solicited, committed, encouraged or requested Mr. Ramos to commit the robbery, or he aided or agreed to aid Ibrahim in planning or committing the robbery,

knowing that the acts would promote or facilitate the crime. *State v. Berube*, 150 Wn.2d 498, 511, 79 P.3d 1144 (2003), *citing* RCW 9A.08.020(3)(a).

The evidence established Ibrahim's focus was on Mr. Blum and Mr. Ramos's focus was on Mr. Capucion. The State presented no evidence of any prior discussions between Mr. Ramos and Ibrahim or any evidence of a plan, to rob the two men at the same time. In fact, the State failed to prove any interaction between Ibrahim and Mr. Ramos prior to the contact with Mr. Blum and Mr. Capucion. Ibrahim testified that he and Mr. Ramos were not together that night but merely in the same place at the same time. RP 1933. Finally, Mr. Ramos made no aggressive moves toward Mr. Blum or any action towards Mr. Blum. RP 1408. Mr. Ramos concentrated solely on Mr. Capucion.

The only evidence upon which the State relied was the purported Spanish utterance by Ibrahim immediately prior the robberies. But, Mr. Blum was unable to state what Ibrahim said; only that it appeared to be in Spanish. RP 1341. This purely speculative evidence was insufficient to establish that Mr. Ramos acted to assist Ibrahim in his robbery of Mr. Blum. The State failed to prove Mr. Ramos was guilty of the robbery of Mr. Blum, either as a principal or

accomplice. Mr. Ramos is entitled to reversal of the conviction in Count II because of the State's failure of proof.

3. *Mr. Ramos's conviction for first degree robbery in count II must be reversed with instructions to dismiss.*

Since there was insufficient evidence to support the first degree robbery conviction in Count II, this Court must reverse the conviction with instructions to dismiss. To do otherwise would violate double jeopardy. *State v. Crediford*, 130 Wn.2d 747, 760-61, 927 P.2d 1129 (1996) (the Double Jeopardy Clause of the United States Constitution "forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding."), *quoting Burks v. United States*, 437 U.S. 1, 9, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978).

F. CONCLUSION

For the reasons stated, there was insufficient evidence presented to support Mr. Ramos's conviction as an accomplice in Count II. As a result, Mr. Ramos asks this Court to reverse Count II with instructions to dismiss.

DATED this 9th day of September 2015.

Respectfully submitted,

s/Thomas M. Kummerow

THOMAS M. KUMMEROW (WSBA 21518)

tom@washapp.org

Washington Appellate Project – 91052

Attorneys for Appellant

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DIVISION ONE**

STATE OF WASHINGTON,)	
)	
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v.)	NO. 73063-1-I
)	
JASON RAMOS,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 10TH DAY OF SEPTEMBER, 2015, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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[X] JASON RAMOS 805141 COYOTE RIDGE CORRECTIONS CENTER PO BOX 769 CONNELL, WA 99326	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 10TH DAY OF SEPTEMBER, 2015.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710