

FILED
Mar 03, 2015
Court of Appeals
Division I
State of Washington

Supreme Court No.: 91399-4
Court of Appeals No.: 70324-2-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CURTIS TANZY,

Petitioner.

FILED

MAR 12 2015

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

CRF

PETITION FOR REVIEW

KATHLEEN A. SHEA
Attorney for Petitioner

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

TABLE OF CONTENTS

A. IDENTITY OF PETITIONER AND THE DECISION BELOW 1

B. ISSUE PRESENTED FOR REVIEW 1

C. STATEMENT OF THE CASE..... 1

D. ARGUMENT IN FAVOR OF GRANTING REVIEW 6

The Court should grant review in the substantial public interest because the State failed to show Mr. Tanzy inflicted substantial bodily injury on Mr. Carter acting as either a principal or an accomplice. 6

a. The State did not prove beyond a reasonable doubt that Mr. Tanzy acted as an accomplice to Mr. Rosas..... 7

b. The State did not prove beyond a reasonable doubt that Mr. Tanzy inflicted substantial bodily injury by punching Mr. Carter in the head. 9

c. This Court should accept review and reverse. 10

E. CONCLUSION 11

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

City of Seattle v. Slack, 113 Wn.2d 850, 784 P.2d 494 (1989) 6

State v. Cantu, 156 Wn.2d 819, 132 P.3d 725 (2006)..... 6

State v. Cronin, 142 Wn.2d 568, 14 P.3d 752 (2000) 7

State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980)..... 9

State v. Roberts, 142 Wn.2d 471, 14 P.3d 713 (2000)..... 7

United States Supreme Court Decisions

In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) 6

Washington Statutes

RCW 9A.36.021 6

Washington Rules

RAP 13.4 1, 10

Constitutional Provisions

Const. art. I, sec. 3 6

U.S. Const. amend. XIV 6

A. IDENTITY OF PETITIONER AND THE DECISION BELOW

Mr. Tanzy requests this Court grant review pursuant to RAP 13.4(b) of the decision of the Court of Appeals, Division One, in State v. Curtis Tanzy, No. 70324-2-I, filed February 2, 2015. A copy of the opinion is attached as Appendix A.

B. ISSUE PRESENTED FOR REVIEW

No reasonable factfinder could determine, beyond a reasonable doubt, that Curtis Tanzy committed second degree assault acting as either a principal or an accomplice given the lack of evidence presented at trial. When a criminal defendant is convicted upon insufficient evidence, his fundamental right to due process is violated. Should this Court grant review in the substantial public interest because the evidence at trial fails to support the conviction entered against Mr. Tanzy? RAP 13.4(b)(4).

C. STATEMENT OF THE CASE

Steven Carter was a student living in Belltown when he became a regular at a bar called the Empire Lounge. 3/28/13 RP 29-31. He frequented the bar often enough that he became friends with one of the bartenders, Tessa Engler, as well as one of the other regular patrons, Chris Glosecki. 3/28/13 RP 32, 33. One night, after Ms. Engler closed

the Empire Lounge for the evening, the three decided to walk over to Belltown Pizza for additional drinks and pizza. 3/28/13 RP 33. Mr. Carter drank two pitchers of beer at the Empire Lounge and then a couple of scotch and cokes at Belltown Pizza, which was common for him during a night out. 3/28/13 RP 35, 37.

At Belltown Pizza, Mr. Glosecki expressed interest in a woman seated at a nearby table. 3/28/13 RP 38. Mr. Carter encouraged Mr. Glosecki to talk to her and, when Mr. Glosecki declined, Mr. Carter sent a drink over on Mr. Glosecki's behalf and later approached the woman to introduce himself and Mr. Glosecki. Id. Curtis Tanzy was also at Belltown Pizza that night, and at trial the State speculated the woman was there with a group of people that included Mr. Tanzy. 4/1/13 RP 50. The woman accepted the beer Mr. Carter sent over and no harsh words were exchanged between the two groups. 4/1/13 RP 51.

The remainder of the relevant activity that night was captured by Belltown Pizza's security cameras. Ex. 1. About 30 minutes after arriving at the restaurant, Ms. Engler decided to step outside with other patrons to smoke a cigarette, and Mr. Carter joined them. 3/28/13 RP 39, 91; Ex. 1, Track 4 at 00:02-00:22; Ex. 1, Track 5 at 00:29-00:35.

Mr. Tanzy followed behind. Ex. 1, Track 4 at 00:16-00:24; Ex. 1, Track 5 at 00:34-00:40. Once outside, the video shows Mr. Tanzy sharing a cigarette with another man, Justin Rosas, who is balancing on a skateboard, while Mr. Carter stands nearby with Ms. Engler and the other smokers. Ex. 1, Track 6 at 00:39-00:50. Mr. Tanzy and Mr. Rosas may exchange words, but there is no sound to the video and an umbrella blocks most of their interaction. Ex. 1, Track 6 at 00:49-01:00. Mr. Tanzy then moves behind Mr. Carter. Ex. 1, Track 6 at 00:59-01:04. Suddenly, without warning or provocation, Mr. Tanzy punches Mr. Carter from behind, striking the right side of Mr. Carter's head. Ex. 1, Track 6 at 01:12.

Mr. Carter falls forward, bumping into Ms. Engler and landing face down on the concrete sidewalk, where he immediately flips himself over and puts his hand to his face. Ex. 1, Track 6 at 01:12-01:17. He lies there, at one point reaching out for Ms. Engler. Ex. 1, Track 6 at 01:23. Although in the supine position, his legs are bent and his feet are planted on the ground. Ex. 1, Track 6 at 01:17-01:26. Ms. Engler shows brief concern, but turns around to accept a cigarette from a fellow smoker, turning her back to Mr. Carter. Ex. 1, Track 6 at 01:21-01:29. At the same time, Mr. Tanzy walks down the street,

eventually disappearing from the camera's view. Ex. 1, Track 01:15-01:48.

As Mr. Tanzy leaves the scene, Mr. Rosas moves to the curb, next to Mr. Carter's head. Ex. 1, Track 6 at 01:14-01:19. He waits until Ms. Engler's attention returns to smoking and swiftly lodges a kick at Mr. Carter's head. Ex. 1, Track 6 at 01:25-01:27. However, he misses badly and lands almost theatrically on the ground. Ex. 1, Track 6 at 01:27-01:30. Having squandered his opportunity to kick Mr. Carter in the head, Mr. Rosas lashes out as he stands up, slamming the side of his skateboard down on Mr. Carter's face. Ex. 1, Track 6 at 01:33-01:36. Immediately after the blow, Mr. Carter is still. Ex. 1, Track 6 at 01:37-01:52. His arms lay at his sides and his legs lay flat. Id. Ms. Engler eventually kneels beside him and Mr. Carter's legs begin to move again. Ex. 1, Track 6 at 01:47-01:55.

At trial, Mr. Carter testified he remembered nothing between stepping outside the door of the restaurant and waking up on the sidewalk, including the time he spent chatting with the smokers prior to the first blow to his head. 3/28/13 RP 40. When he woke up, his face was numb. 3/28/13 RP 42. Mr. Carter suffered a central midface fracture, meaning that all the bones between the eye sockets were

broken, including his nose, and it took five days before he could open his left eye. 3/28/13 RP 43; 4/1/13 RP 8. Craig Birgfeld, M.D., a craniofacial plastic surgeon, testified Mr. Carter's injuries were consistent with a single blow to the face. 4/1/13 RP 13. Testing at the hospital also revealed Mr. Carter's blood alcohol level was 0.187. 4/1/13 RP 16.

The State charged Mr. Tanzy with second degree assault. CP 9. It alleged he inflicted substantial bodily harm in one of two ways. First, by knocking Mr. Carter unconscious with the first blow and thereby causing a temporary but substantial loss or impairment to the functioning of Mr. Carter's brain, or second, by acting as an accomplice to Mr. Rosas, who struck Mr. Carter in the face with the edge of his skateboard resulting in the central midface fracture. 4/2/13 RP 95-96. Mr. Tanzy conceded he assaulted Mr. Carter, but argued the evidence supported a conviction for fourth degree assault only. 4/2/13 RP 121.

The jury convicted Mr. Tanzy of second degree assault, and found Mr. Carter's injuries substantially exceeded the level of bodily harm necessary to constitute substantial bodily harm. CP 167, 169. The trial court denied the State's request for an exceptional sentence

and imposed 66 months in prison. 5/8/13 RP 177-78; CP 176. The Court of Appeals affirmed Mr. Tany's convictions. Slip Op. at 9.

D. ARGUMENT IN FAVOR OF GRANTING REVIEW

The Court should grant review in the substantial public interest because the State failed to show Mr. Tany inflicted substantial bodily injury on Mr. Carter acting as either a principal or an accomplice.

The State bears the burden of producing sufficient evidence to prove beyond a reasonable doubt every essential element of a crime charged. In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); State v. Cantu, 156 Wn.2d 819, 825, 132 P.3d 725 (2006). A criminal defendant's fundamental right to due process is violated when a conviction is based upon insufficient evidence. Winship, 397 U.S. at 358; U.S. Const. amend. XIV; Const. art. I, sec. 3; City of Seattle v. Slack, 113 Wn.2d 850, 859, 784 P.2d 494 (1989). In order to convict Mr. Tany of second degree assault the State was required to prove he intentionally assaulted Mr. Carter and recklessly inflicted "substantial bodily harm." RCW 9A.36.021(1)(a); CP 9. Because the State's evidence was lacking to such a degree that no reasonable juror could find Mr. Tany committed second degree assault against Mr.

Carter, the Court of Appeals' holding to the contrary raises an issue of substantial public interest.

- a. The State did not prove beyond a reasonable doubt that Mr. Tanzy acted as an accomplice to Mr. Rosas.

At trial, the State alleged Mr. Tanzy committed second degree assault both as a principal and as an accomplice. Under a theory of accomplice liability, the State argued the jury should convict Mr. Tanzy as an accomplice to Mr. Rosas, who slammed his skateboard into Mr. Carter's face, causing a central midface fracture. 4/1/13 RP 8; 4/2/13 RP 96.

The language of the accomplice statute requires "that the putative accomplice must have acted with knowledge that his or her conduct would facilitate *the* crime for which he or she is eventually charged." State v. Cronin, 142 Wn.2d 568, 579, 14 P.3d 752 (2000) (emphasis original). "The legislature... intended the culpability of an accomplice not extend beyond the crimes of which the accomplice actually has 'knowledge.'" State v. Roberts, 142 Wn.2d 471, 511, 14 P.3d 713 (2000). While the accomplice need not have knowledge of

every element of the crime charged, he must have general knowledge of that specific crime. Id. at 512.

The Court of Appeals found that, viewed in the light most favorable to the State, the jury could find Mr. Tanzy knew Mr. Rosas planned to assault Mr. Carter. Slip Op. at 8. However, even in the light most favorable to the State, there was only limited evidence that Mr. Tanzy and Mr. Rosas were acquainted with one another and no evidence Mr. Tanzy was aware Mr. Rosas would assault Mr. Carter.

Ms. Engler testified she recalled Mr. Tanzy and Mr. Rosas together in the restaurant. 3/28/13 RP 125-26. A street musician, Glen Freeman, testified he saw Mr. Tanzy and Mr. Rosas interact briefly outside the restaurant not long before Mr. Tanzy followed Mr. Carter outside. 3/28/13 RP 156. The video shows Mr. Tanzy accept a cigarette from Mr. Rosas, and possibly exchange words with him, before punching Mr. Carter. Ex. 1, Track 6 at 00:39-01:00. However, Mr. Tanzy struck Mr. Carter in the head and then walked away from the scene. Ex. 1, Track 01:12-01:48. By the time Mr. Rosas lodged the kick at Mr. Carter's head, Mr. Tanzy had left the scene, walked down the street, and was almost entirely out of view of the security camera. Ex. 1, Track 6 at 01:26. This alone is not enough for a rational trier of

act to determine, beyond a reasonable doubt, that Mr. Tanzy promoted or facilitated Mr. Rosas' attack of Mr. Carter, or that he had any knowledge Mr. Rosas planned to assault Mr. Carter. See State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980).

- b. The State did not prove beyond a reasonable doubt that Mr. Tanzy inflicted substantial bodily injury by punching Mr. Carter in the head.

There was also insufficient evidence for the jury to find Mr. Tanzy committed assault in the second degree as the principal actor. The State argued that when Mr. Tanzy punched Mr. Carter, he inflicted substantial bodily harm because Mr. Carter briefly lost consciousness as he fell, thereby causing temporary impairment of his brain functioning. 4/2/13 RP 95. The Court of Appeals held that sufficient evidence supported the State's theory because Mr. Freeman testified Mr. Carter failed to put his hands out to brace himself as he fell to the ground, and Ms. Engler testified that after he fell to the ground from the punch, he was "laid out completely" and his "his eyes were just rolled in the back of his head." Slip Op. at 8.

However, while Ms. Engler did make these statements, she also admitted the video footage of the incident contradicted her memory. 3/28/13 RP 129-132. Upon reviewing the video during the trial, she

agreed Mr. Carter actually fell forward, turned himself over, and laid on the ground with his arms by his head and his legs bent before Mr. Rosas struck him with the skateboard. Id. Thus, even in the light most favorable to the State, the only evidence Mr. Carter lost consciousness prior to being hit with the skateboard by Mr. Rosas is the street musician's testimony that Mr. Carter fell a "dead man's fall." A lay witness's assessment that Mr. Carter failed to brace himself for impact is not sufficient to find, beyond a reasonable doubt, that Mr. Carter momentarily lost consciousness while falling after Mr. Tanzy punched him.

c. This Court should accept review and reverse.

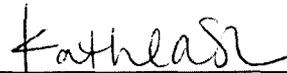
Given the lack of evidence in this case upon which a reasonable factfinder could determine, beyond a reasonable doubt, that Mr. Tanzy committed second degree assault against Mr. Carter, Mr. Tanzy's constitutional right to due process was violated when the conviction was entered against him. This Court should accept review in the substantial public interest and reverse. RAP 13.4(b)(4).

E. CONCLUSION

The Court should grant review of the Court of Appeals opinion affirming Mr. Tanzy's conviction.

DATED this 3rd day of March, 2015.

Respectfully submitted,



Kathleen A. Shea – WSBA 42634
Washington Appellate Project
Attorney for Petitioner

APPENDIX A

COURT OF APPEALS, DIVISION I OPINION

February 2, 2015

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

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.) UNPUBLISHED OPINION
)
 CURTIS JOHN TANZY,)
)
 Appellant.)
 _____) FILED: February 2, 2015

2015 FEB -2 PM 9:47
COURT OF APPEALS
STATE OF WASHINGTON

SCHINDLER, J. — A jury found Curtis John Tanzy guilty of assault in the second degree of Steven Carter. By special verdict, the jury found the injuries exceeded the level of harm necessary to constitute substantial bodily harm. Tanzy appeals, asserting the State did not prove beyond a reasonable doubt that he acted as an accomplice or that he caused substantial bodily harm. Because sufficient evidence supports finding Tanzy acted as an accomplice and caused substantial bodily harm, and the arguments Tanzy asserts in his statement of additional grounds are without merit, we affirm.

FACTS

On the night of June 10, 2012, Steven Carter and Chris Glosecki went to Empire Lounge to get together with Tessa Engler after her bartending shift ended. Carter and Glosecki had several drinks while they waited for Engler. After Engler closed the bar around 10:30 p.m., the three friends walked to Belltown Pizza.

Belltown Pizza was fairly busy that night. A large group of friends was sitting at two tables near the back wall of the bar. Curtis John Tanzy was part of the large group. Carter, Engler, and Glosecki sat at a nearby table. Glosecki commented that one of the women in the group was pretty, and Carter encouraged him to buy her a drink. When Glosecki refused, Carter asked their server to deliver a drink to the woman on behalf of Glosecki. About an hour later, Engler began talking to two women who were part of the large group. The two women invited Carter and Engler to go outside to smoke a cigarette. As they walked to the door to go outside, Tanzy followed them.

Justin Rosas was on the sidewalk outside of Belltown Pizza with his skateboard. Carter, Engler, and the two women stood in a circle on the sidewalk near Rosas. Carter stood facing the street with his back to the patio railing. Rosas held out a cigarette for Tanzy, and Tanzy walked straight up to Rosas. Tanzy took the cigarette and talked to Rosas. Tanzy then moved to lean against the patio railing directly behind Carter. Meanwhile, Rosas walked the other way and leaned against a parking meter.

Glen Freeman, a street musician, approached Carter, Engler, and the two women. Freeman lit a cigarette for one of the women. As Engler moved toward Freeman to light her cigarette, Tanzy punched Carter in the head. Carter fell forward, landing face-down on the sidewalk. Carter rolled over with his hands on his face. Engler spun around to see what happened, handed her cigarette to one of the women, and approached Carter to check on him.

Tanzy walked down the sidewalk away from Belltown Pizza. Rosas then moved next to Carter and leaned against a parked car. When Engler turned around to take her

cigarette back, Rosas slammed his skateboard across Carter's face. Rosas fled in the opposite direction of Tanzy.

Freeman ran inside Belltown Pizza to get help. Engler knelt on the ground to help Carter, who was bleeding profusely. Engler rolled Carter over onto his side to stop him from choking on the blood.

Freeman and several others followed Tanzy down the street to stop him from getting away, but Tanzy eventually eluded them by going into a nearby night club. The police found Rosas about a block away from Belltown Pizza in the direction Tanzy had fled.

Carter went to the hospital with extensive facial injuries. Carter suffered "a fracturing of all the bones in between the eye sockets," including the nasal bones. A craniofacial plastic surgeon repositioned the facial bones and placed six titanium plates and screws "across the fractures to hold them into position."

The State charged "JUSTIN A. ROSAS and CURIS JOHN TANZY, and each of them, together with others," with assault in the second degree in violation of RCW 9A.36.021(1)(a). Rosas pleaded guilty. By amended information, the State charged Tanzy with assault in the second degree, alleging that "TANZY, together with others, in King County Washington, on or about June 10, 2012, did intentionally assault another and thereby recklessly inflict substantial bodily harm upon Steven Carter." The State also alleged as an aggravating circumstance that "the injuries of the victim of the current offense substantially exceeded the level of bodily harm necessary to satisfy the elements of the crime."

A number of witnesses testified during the four-day trial, including Freeman, Carter, Engler, police officers, and medical doctors. The court admitted into evidence the videotape recordings from three surveillance cameras at Belltown Pizza. One surveillance camera was located inside Belltown Pizza and angled toward the back wall of the bar. The second camera was located just inside the front doorway, and the third camera was located outside and angled toward the sidewalk.

Freeman testified he plays music outside Belltown Pizza “[a]lmost every night,” and he had seen Tanzy “quite a few times” before. Freeman testified that Tanzy and Rosas were together that night and that he saw them outside talking to each other shortly before the assault.

Carter testified he had 8 to 10 alcoholic drinks that night and has no memory of “what happened after walking outside” Belltown Pizza. Carter testified, “I remember getting about two steps outside the door and then waking up on the sidewalk.”

Engler testified that when Rosas struck Carter in the face with the skateboard, “Steve’s face exploded in blood.” Engler stated that she “knelt down to try to attend [to] Steve as fast as possible” and that she “tried to isolate Steve’s neck and head because that’s where the injury was.” Engler testified Carter “started to choke on the blood that was running down his nose So what I did is sort of put his arm over and roll him to the side so he [could] cough up all that blood.”

Seattle Police Department Officer Matthew Newsome testified that Carter “looked like a bloody mess” and was “struggling to stay conscious.” The doctor who performed facial surgery on Carter testified that the fractures were “consistent with a single blow to the face.”

The court instructed the jury on assault in the second degree and accomplice liability. Jury instruction 14 states:

The State alleges that the defendant or an accomplice committed multiple acts of Assault in the Second Degree. To convict the defendant of Assault in the Second Degree, one particular act of Assault 2nd degree must be proved beyond a reasonable doubt, and you must unanimously agree as to which act has been proved. You need not unanimously agree that the defendant committed all the acts of Assault in the Second Degree.

At the request of the defense, the court also instructed the jury on the lesser included offense of assault in the fourth degree.

In closing argument, the defense attorney argued that Tanzy acted independently from Rosas and that "Rosas alone committed the crime of assault in the second degree." The defense conceded Tanzy was "guilty of assault in the fourth degree, the crime for which he is responsible," but argued he was not responsible for Carter's extensive injuries because the punch did not cause Carter to lose consciousness.

The jury found Tanzy guilty of assault in the second degree. The jury also returned a special verdict finding the State proved the aggravating circumstance that Carter's injuries "substantially exceed the level of bodily harm necessary to constitute substantial bodily harm." Tanzy appeals.

ANALYSIS

Tanzy contends the State did not prove he was guilty of assault in the second degree. The State must prove each essential element of the crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Oster, 147 Wn.2d 141, 146, 52 P.3d 26 (2002). In deciding whether sufficient evidence supports a conviction, we view the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found

the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

A challenge to the sufficiency of the evidence admits the truth of the State's evidence. Salinas, 119 Wn.2d at 201. "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Salinas, 119 Wn.2d at 201. We defer to the trier of fact on "issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004), abrogated in part on other grounds by Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

To convict Tanzy of assault in the second degree in violation of RCW 9A.36.021(1)(a),¹ the State had the burden of proving beyond a reasonable doubt that Tanzy (1) intentionally assaulted Carter and (2) recklessly caused "substantial bodily harm." See State v. McKague, 172 Wn.2d 802, 805, 262 P.3d 1225 (2011).

"Substantial bodily harm" includes injury "which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part." RCW 9A.04.110(4)(b).

Under the accomplice liability statute, an individual is guilty of a crime committed by another if he or she "is an accomplice of such other person in the commission of the

¹ RCW 9A.36.021(1) states, in pertinent part:

A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm.

crime." RCW 9A.08.020(2)(c). An individual is an accomplice if:

- (a) With knowledge that it will promote or facilitate the commission of the crime, he or she:
 - (i) Solicits, commands, encourages, or requests such other person to commit it; or
 - (ii) Aids or agrees to aid such other person in planning or committing it.

RCW 9A.08.020(3).

Tanzy asserts the State did not prove beyond a reasonable doubt that he acted as an accomplice or that he caused substantial bodily harm. Tanzy concedes he punched Carter but contends insufficient evidence supports finding that he acted as an accomplice to Rosas' assault of Carter with the skateboard or that his punch caused Carter to lose consciousness.

Viewing the evidence in the light most favorable to the State, a rational trier of fact could find the State proved beyond a reasonable doubt that Tanzy acted as an accomplice and caused substantial bodily harm to Carter.

Engler testified Tanzy and Rosas were together and part of the large group of friends sitting against the back wall of the bar. Freeman testified he saw Tanzy and Rosas walk outside together less than 10 minutes before the assault. Freeman testified that Tanzy and Rosas talked briefly before Tanzy went back inside by himself.

Surveillance video from inside Belltown Pizza shows Tanzy enter the bar alone and walk toward the group at the back wall. After Tanzy joins the group, two women from the group approach Carter and Engler and then lead them outside. Tanzy walks directly behind them to the sidewalk. When Tanzy walks through the front door, Rosas immediately holds his arm out to offer Tanzy a cigarette. Tanzy walks straight to Rosas

and takes the cigarette from him. The videotape shows Tanzy and Rosas standing side-by-side a few feet away from Carter, Engler, and the two women.

The videotape shows Tanzy and Rosas switch places and move into position. Rosas stands against a parking meter watching the group. After Tanzy punches Carter, Rosas slowly moves toward Carter. Carter is lying on his back with his head near the edge of the sidewalk. Rosas leans against a parked car, watching the commotion. When Engler turns away, Rosas picks up his skateboard and slams it down across Carter's face.

Tanzy asserts insufficient evidence supports finding he acted as an accomplice because the State did not prove he knew Rosas would assault Carter with the skateboard. But an accomplice need not have specific knowledge of every element of the crime committed by the principal, " 'provided he has general knowledge of that specific crime.' " In re Pers. Restraint of Domingo, 155 Wn.2d 356, 365, 119 P.3d 816 (2005) (quoting State v. Roberts, 142 Wn.2d 471, 512, 14 P.3d 713 (2000)); State v. Allen, 178 Wn. App. 893, 903, 317 P.3d 494 (2014). Viewed in the light most favorable to the State, the jury could find Tanzy knew Rosas planned to assault Carter.

Sufficient evidence also supports finding that Carter briefly lost consciousness after Tanzy punched him in the head. The surveillance video shows that when Tanzy punched him, Carter fell straight forward and landed face-down on the sidewalk. After Carter rolled over onto his back, he was motionless for a moment. He began to move his legs just before Rosas hit him with the skateboard.

Freeman testified that Carter did not put his hands out to brace himself as he fell to the ground. Freeman described the manner in which Carter fell as "a dead man's

fall" where "all of a sudden, your whole body, everything stops, . . . it's just bam and you're gone."

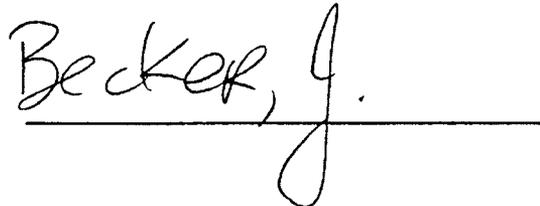
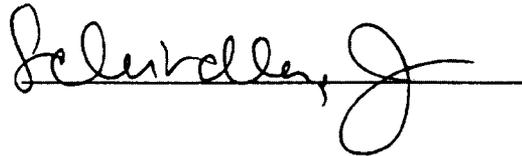
Engler testified that when Carter fell to the ground after the punch, he was "laid out completely." She stated that between the punch and the skateboard attack, "what was really notable was his eyes were just rolled in the back of his head completely out." Engler testified that Carter did not say anything between the two attacks and did not put his hands up to protect himself from the skateboard.

Officer Newsome testified that when he arrived in response to the 911 call, Carter was going "in and out" and "struggling to stay conscious."

Viewing the evidence in the light most favorable to the State, a rational trier of fact could find Tanzy guilty of assault in the second degree.²

We affirm.

WE CONCUR:



² In a statement of additional grounds, Tanzy asserts that the court's evidentiary rulings demonstrated bias and that defense counsel provided ineffective assistance by failing to object. Tanzy also asserts prosecutorial misconduct because the State called a witness who was disclosed in discovery but was not included on the witness list. The record does not establish ineffective assistance of counsel or prosecutorial misconduct or show that the court abused its discretion in making evidentiary rulings.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 70324-2-1**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent Benjamin Carr, DPA
[PAOAppellateUnitMail@kingcounty.gov] [ben.carr@kingcounty.gov]
King County Prosecutor's Office-Appellate Unit
- petitioner
- Attorney for other party


MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: March 3, 2015