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December 24, 2015
Court of Appeals
Division I
State of Washington

NO. 73063-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JASON M. RAMOS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CAROL A. SCHAPIRA

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

JASON L. SIMMONS
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

TABLE OF CONTENTS

	Page
A. <u>ISSUES</u>	1
B. <u>STATEMENT OF FACTS</u>	2
1. PROCEDURAL FACTS	2
2. SUBSTANTIVE FACTS.....	2
C. <u>ARGUMENT</u>	5
1. THE EVIDENCE ESTABLISHED THAT RAMOS WAS AN ACCOMPLICE TO THE FIRST DEGREE ROBBERY OF BLUM IN COUNT II	5
D. <u>CONCLUSION</u>	12

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

In re Wilson, 91 Wn.2d 487,
588 P.2d 1161 (1979)..... 7

State v. Finch, 137 Wn.2d 792,
975 P.2d 967 (1999)..... 6

State v. Fiser, 99 Wn. App. 714,
995 P.2d 107, review denied,
141 Wn.2d 1023 (2000)..... 11

State v. Gentry, 125 Wn.2d 570,
888 P.2d 1105 (1995)..... 6

State v. Lozier, 32 Wn. App. 376,
647 P.2d 535 (1982)..... 7

State v. McPherson, 111 Wn. App. 747,
46 P.3d 284 (2002)..... 7

State v. Parker, 60 Wn. App. 719,
806 P.2d 1241 (1991)..... 7

State v. Truong, 168 Wn. App. 529,
277 P.3d 74 (2012)..... 7, 8

Statutes

Washington State:

RCW 9A.08.020..... 6

Other Authorities

WPIC 10.51..... 6

A. ISSUES

1. Evidence is sufficient to support Jason Ramos' conviction for robbery in the first degree in count II as an accomplice if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found that Ramos, acting with knowledge that it would promote or facilitate the commission of the robbery, solicited, commanded, encouraged, or aided the commission of the offense. Aid means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his presence is aiding in the commission of the crime. Here, substantive evidence demonstrated Ramos and Ayman Ibrahim were together when they came across Neal Blum and Jarvis Capucion. Ramos was armed with a knife and Ibrahim was armed with a screwdriver. Ramos and Ibrahim stopped at their soon to be victims: Ibrahim concentrating on Blum, while Ramos focused on Capucion. Standing on an outdoor stairway a mere five to six stairs apart from each other, Ramos and Ibrahim sized up Blum and Capucion while speaking to each other in what appears to have been Spanish. Ibrahim then yelled a command and in response Ramos punched Capucion in the face and grabbed his backpack. Immediately thereafter Ibrahim physically took Blum's backpack, while Ramos struggled with Capucion for his backpack. Ramos

then repeatedly stabbed Capucion causing great bodily harm and was able to steal the backpack. Ibrahim and Ramos fled together and minutes later were arrested together. Under these circumstances could a reasonable trier of fact conclude that Ramos was an accomplice to the first degree robbery of Blum?

B. STATEMENT OF FACTS

1. PROCEDURAL FACTS

The appellant, Jason Ramos, was charged with two counts of robbery in the first degree and one count of assault in the first degree. CP 11-12. Following a jury trial, Ramos was convicted as charged. CP 435-37.

2. SUBSTANTIVE FACTS

Neal Blum and Jarvis Capucion are friends and homeless advocates who decided to share a few beers near a light rail station before heading home on Halloween, 2013. RP 1323-33, 1757-64. As Capucion and Blum sat on a stairway in a wooded area a car alarm went off and then Ayman Ibrahim and Jason Ramos came running down the stairs. RP 1332-34, 1765-67. Capucion and Blum moved to let the men pass, but Ramos and Ibrahim stopped. RP 1334-36, 1767. Ibrahim went to Blum.

RP 1334, 1767, 1787. Ramos stopped on the stairs immediately below Capucion. RP 1335, 1338-39, 1767. Ramos and Capucion were about five stairs below Blum and Ibrahim. RP 1335. Ibrahim was armed with a screwdriver and Ramos was armed with a knife. RP 1129, 1939. Ibrahim was trying to engage Blum, attempting to shake Blum's hand while he concealed his weapon under a bandage on his arm. RP 1335-37, 1340. Ramos continued to stand directly below the seated Capucion. RP 1337-38, 1768. Ramos and Ibrahim were talking to each other in what appeared to be Spanish. RP 1337-39.

Ibrahim then gave a command to Ramos and Ramos responded by punching the seated Capucion in the face and grabbing Capucion's backpack. RP 1340-41, 1768, 1771. Moments later Ibrahim physically took Blum's backpack. RP 1342-43. Meanwhile, Ramos and Capucion struggled over Capucion's backpack and then Ramos stabbed Capucion repeatedly. RP 1344, 1771-72, 1791-92. Blum let Ibrahim take his backpack without any resistance in part because he was watching Ramos attack Capucion and Blum wanted to avoid a fight. RP 1342.

Capucion then yelled out something to the effect of, "Neal (Blum) help, he's stabbing me." RP 1343. Ibrahim turned to Ramos and started to head in his direction. RP 1344-45. Blum feared that Ibrahim was going to help his partner Ramos attack Capucion. RP 1345-46. To stop Ibrahim

from assisting Ramos' assault on Capucion, Blum cut and stabbed Ibrahim. RP 1345-46. Blum then ran to Capucion's aid, cutting, and stabbing Ramos to stop Ramos' knife attack on Capucion. RP 1347-49. Blum was fighting for Capucion's life. RP 1355. Capucion believed he was going to die. RP 1773.

After fending off the attackers Blum called 911. RP 1356. As Blum spoke to 911 he watched Ramos and Ibrahim walking away together until they were stopped by police. RP 1383-84. Officer Heitman was the first to contact Ibrahim and Ramos. RP 1140-41. Ramos had a knife. RP 1129, 1139, 1142. The cutting edge of the knife blade had Capucion's DNA on it. RP 1524. Ramos also had Capucion's backpack. RP 1129, 1236, 1799.

Ibrahim testified at trial that he did not rob anyone but admitted to being present and armed with a screwdriver. RP 1933, 1939. Ibrahim acknowledged that Ramos is someone he knows. RP 1938. He also testified that he saw Ramos punch Capucion, grab a backpack, and swing at Capucion in what looked like a stabbing motion. RP 1944-49.

Capucion suffered eight penetrating stab wounds and lost his spleen as a result of the assault. RP 1533-34, 1537. Left untreated there was a possibility that Capucion would have died from Ramos' assault. RP 1542.

C. ARGUMENT

1. **THE EVIDENCE ESTABLISHED THAT RAMOS WAS AN ACCOMPLICE TO THE FIRST DEGREE ROBBERY OF BLUM IN COUNT II.**

Ramos' sole challenge on appeal is to the sufficiency of the evidence supporting the jury's conclusion that he acted as an accomplice to the first degree robbery of Blum, which constitutes count II. See Brief of Appellant, at 4. In other words, he effectively concedes that the evidence proved he intentionally caused great bodily harm when he brutally stabbed and robbed Capucion and that Ibrahim simultaneously, and mere feet away, committed a first degree robbery upon Blum. However, Ramos asserts that the State failed to prove that his presence promoted, facilitated, or aided the robbery of Blum by Ibrahim, despite arriving with Ibrahim, speaking to Ibrahim in the moments up to the commencement of the robberies that started a few feet apart, committing a robbery simultaneously with Ibrahim, and fleeing with Ibrahim.

Ramos' claim is without merit. Through testimony and physical evidence, the State presented abundant evidence to allow a reasonable juror to conclude that Ramos and Ibrahim were acting together to rob Blum and Capucion, each present to promote, facilitate, and willing to assist the other.

Evidence is sufficient to support a conviction if, after viewing all of it in the light most favorable to the State, any rational trier of fact could have found any disputed elements proved beyond a reasonable doubt. State v. Finch, 137 Wn.2d 792, 831, 975 P.2d 967 (1999). When a defendant challenges the evidentiary sufficiency of the State's case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Gentry, 125 Wn.2d 570, 597, 888 P.2d 1105 (1995). Furthermore, a defendant who claims insufficiency admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. Id.

A person is an accomplice to another's crime 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)(a)(i)-(ii).

The Washington Pattern Jury Instructions further explain in WPIC 10.51:

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the

criminal activity of another must be shown to establish that a person present is an accomplice.

To support a conviction as an accomplice, there must be evidence that the defendant was ready to assist, or otherwise intended to encourage the conduct of his coparticipant; mere presence at the scene of the crime is insufficient. State v. Lozier, 32 Wn. App. 376, 647 P.2d 535 (1982); In re Wilson, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979). A defendant is an accomplice when he aids or agrees to aid another person in committing a crime by associating himself with that criminal undertaking, participating in the crime as something he desires to accomplish. State v. McPherson, 111 Wn. App. 747, 757, 46 P.3d 284, 290 (2002).

Where criminal liability is predicated on accomplice liability, the State must prove only that the accomplice had general knowledge of his coparticipant's substantive crime, not that the accomplice had specific knowledge of the elements of the coparticipant's crime. State v. Truong, 168 Wn. App. 529, 540, 277 P.3d 74, 79 (2012). Mere presence of the defendant without aiding the principal—despite knowledge of the ongoing criminal activity—is not sufficient to establish accomplice liability. State v. Parker, 60 Wn. App. 719, 724-25, 806 P.2d 1241 (1991). Rather, the State must prove that the defendant was ready to assist the principal in the crime and that he shared in the criminal intent of the principal, thus

“demonstrating a community of unlawful purpose at the time the act was committed.” Truong, 168 Wn. App. at 540.

Here, a reasonable juror could, and twelve reasonable jurors did, find that the evidence established Ramos and Ibrahim were working together to rob Blum and Capucion, demonstrating a community of unlawful purpose at the time the act was committed.

Together, Ramos and Ibrahim robbed Blum and Capucion, a joint criminal undertaking in which Ramos and Ibrahim both participated to accomplish the desired goal: taking Blum and Capucion’s property. Direct and circumstantial evidence, taken in the light most favorable to the State, demonstrates that Ramos and Ibrahim acted as a team, supporting, facilitating and aiding each other’s efforts. Both were present and willing to assist the other. Both in fact did assist the other.

Ramos and Ibrahim were together when they came upon their soon to be victims. RP 1332-34, 1765-67. Rather than passing the two men on the stairs, Ramos and Ibrahim both stopped. Id. Each focused on a victim: Ibrahim concentrating on Blum, while Ramos watched Capucion. RP 1334-35, 1767. Standing a mere five to six stairs apart from each other, Ramos and Ibrahim sized up their potential victims while speaking to each other in what appears to have been Spanish. RP 1335, 1338-40. In light of these facts a reasonable jury could conclude that Ramos and

Ibrahim were planning and preparing to rob Capucion and Blum together, with each armed man focusing on an individual victim to create a tactical advantage. Ramos and Ibrahim each had their own victim in their sights, but essential to the success of robberies was the presence of the other to support, promote, facilitate, and aid the other if needed.

After sizing up the victims, Ibrahim yelled a command. RP 1340-41. Immediately after Ibrahim vocalized his command, Ramos punched Capucion in the face. RP 1340-41, 1768, 1771. This action by Ramos shows he was working as a team with Ibrahim. After Ramos punched Capucion in the face, he grabbed his backpack, and started stabbing Capucion. RP 1340-41, 1768, 1771. While Ramos attacked Capucion, Ibrahim physically took Blum's backpack. RP 1342-43. Ibrahim's command, Ramos' immediate response, and the essentially simultaneous nature of the robberies that started a few feet apart further demonstrate that Ramos and Ibrahim were working together to encourage, facilitate, and aid the joint criminal undertaking. These were not two separate and distinct crimes that miraculously and inadvertently happened at the same time and started feet apart. Rather, these robberies were the product of a joint criminal undertaking.

Also, Ramos' violent attack on Capucion created in Blum fear of immediate violence. RP 1342-43. Blum let his backpack go in part

because he saw the fight over Capucion's backpack and wanted to avoid a similar fate. Id. By creating this fear in Blum, Ramos promoted and facilitated the robbery of Blum by Ibrahim.

Additionally, the brutal stabbing and robbery perpetrated by Ramos, taken in a light most favorable to the State, circumstantially demonstrated Ramos' willingness to physically assist Ibrahim in robbing Blum, with violence, if needed. Ramos was not merely present, he actively participated in a violent assault and robbery and a reasonable juror could find that he was ready to assist Ibrahim physically rob Blum if needed.

After the robberies, Ramos and Ibrahim fled together. Blum watched them walk down the street together until police stopped them a few blocks away. This joint flight further demonstrates that the two men were operating together as a team, to accomplish the joint criminal undertaking of robbing Capucion and Blum.

By working together, Ramos and Ibrahim, who were both armed, gained a tactical advantage and were able to successfully rob both men, something that likely could not have happened if they were alone. If Ramos was alone he likely could not have robbed Capucion because Blum may have helped his friend. Likewise, if Ibrahim was alone he likely could not have robbed Blum as his friend Capucion may have come to his

aid. Importantly, by using extraordinary and gratuitous violence Ramos prevented Capucion from coming to Blum's aid. This act directly promoted and facilitated Ibrahim's robbery of Blum by incapacitating potential resistance.

Ramos relies heavily on the trial testimony of Ibrahim to suggest that he and Ibrahim were not together, but rather coincidentally happened to be "in the same place at the same time." Brief of Appellant, at 7. This reliance on Ibrahim's testimony is contrary to both the unanimous jury verdict and case law. A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107, review denied, 141 Wn.2d 1023 (2000). Here, the trier of fact necessarily found portions of Ibrahim's testimony to be not credible. Ibrahim testified that he did not rob Blum, but the jury concluded in count II that Blum was the victim of a robbery in the first degree. Ramos himself tacitly concedes this point, as he has failed to claim that there is insufficient evidence that Blum was robbed. Rather, Ramos only claims that there was insufficient evidence demonstrating he was an accomplice to the robbery of Blum. The robberies of Capucion and Blum essentially occurred simultaneously, started a few feet apart, and were committed by two men who arrived together, spoke with each other, carried out

robberies together, and fled together. These acts clearly demonstrate a “community of unlawful purpose at the time the act was committed.” The two robberies did not coincidentally occur at the same time and place as Ramos appears to argue. Rather, the two robberies were the product of a joint criminal undertaking by partners working together to rob two men.

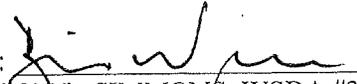
D. CONCLUSION

The jury was provided with sufficient evidence to support its conclusion that Ramos acted as an accomplice to the robbery of Blum in count II. His conviction in count II should be affirmed.

DATED this 24th day of December, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

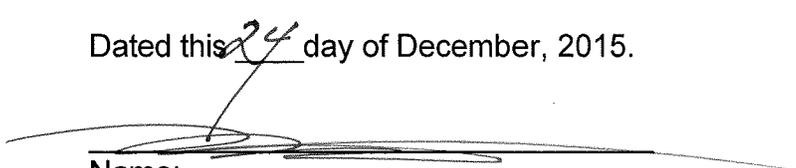
By:  71687
FOR JASON L. SIMMONS, WSBA #39278
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Thomas Kummerow, the attorney for the appellant, at Tom@washapp.org, containing a copy of the BRIEF OF RESPONDENT, in State v. Jason Michael Ramos, Cause No. 73063-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 24 day of December, 2015.



Name:
Done in Seattle, Washington