

NO. 46569-8-II

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

STATE OF WASHINGTON, Respondent

v.

MARCUS ALLEN MORRISON, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-02236-2

BRIEF OF RESPONDENT

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A. RESPONSE TO ASSIGNMENT OF ERROR

I. THE EVIDENCE IS SUFFICIENT TO SUSTAIN THE JURY'S FINDING OF PREMEDITATION.

B. STATEMENT OF THE CASE

On November 23, 2013, Aaron Warner, Rena Donnelly, and the defendant, Marcus Morrison, went out for an evening of drinking and socializing. RP 149. They went to the Main Street Bar in Battle Ground. RP 149. The evening was meant as a celebration of Aaron's upcoming birthday. RP 150. Rena and Morrison began dating about two months prior to this incident at issue in this case, but had known each other for about twelve years. RP 190-92. Their relationship became exclusive as some point prior to the incident. RP 192. The trio drove to the Main Street Bar in Aaron's car. RP 194. Initially things were going fine at the bar, and all parties were getting along. RP 195. Rena became intoxicated over the course of the evening, and at some point Morrison accused Rena of wanting to be with Aaron, not him. RP 196. An argument ensued in which Rena told Morrison that she would not let him tell her what to do or how to act. RP 197. Rena elected to break up with Morrison, and went to go sit with other friends who were at the bar. RP 197. An angered Morrison went out to the patio area of the bar where he sought out an ex-boyfriend of Rena's and assaulted him. RP 198. Morrison came back inside and

yelled at Rena, informing her that he had just beaten up her ex-boyfriend. RP 198.

Rena did not witness the assault on her ex-boyfriend, but she and Aaron decided they should leave the bar. RP 198. Aaron believed the police had been called to address the fight, and Morrison left the bar. RP 152, 162. At first Aaron was going to drive Rena back to her apartment, but Morrison also lives at Rena's apartment building so they decided to go back to Aaron's house. RP 199. They stopped at McDonald's for food prior to reaching Aaron's house and then watched *The Hobbit* when they got there. RP 199. They watched the movie in Aaron's bedroom. RP 199. Aaron and Rena eventually fell asleep in the bed. RP 152. Below are Aaron and Rena's individual accounts of what happened next.

Aaron awoke to Rena screaming and an excruciating pain in the back of his head. RP 152. He put his hand to the back of head and when he pulled his hand back he saw that it was covered in blood. RP 153. He saw Morrison holding a hammer. RP 153. His head felt like it had been run over, and he felt pressure building in his skull. RP 153. Rena was in the corner of the room and Morrison raised the hammer and told her, "Shut the fuck up, bitch. You're next." RP 153. He hit Aaron again in the temple and Aaron briefly lost consciousness. RP 153. When he came to, he heard Rena screaming and heard a "big thud" which sounded like a pumpkin

being dropped from a roof onto concrete. RP 154. He saw Rena holding her head and blood going everywhere. RP 154. Aaron was calling to his roommate Johnny for help. RP 154. Aaron recalls eventually calling 911, although he had to go down the hallway to retrieve his phone because Morrison had thrown it down the hallway. RP 155. He recalled being taken away by the ambulance and waking up in the ICU. RP 156. The pain in his head was excruciating. RP 157. Aaron's skull was fractured. RP 157. At one point, Aaron had to return to the hospital because his brain was bleeding. RP 157. At the time of trial, Aaron was still having problems with headaches and his vision. RP 157.

Rena recalls waking up to Morrison hitting Aaron in the head twice, asking, "How do you like that?" And, "How does that feel?" RP 200. Morrison began hitting Aaron again. RP 200. She began screaming and Morrison yelled, "Shut up bitch, you're next." RP 200. That was the last thing she remembered before losing consciousness. RP 200. When she came to, she put her hand on her head and couldn't feel her right side and couldn't move. RP 200-01. She was face first on the floor, on top of a DVD player. RP 200. When she felt the back of her head she felt a hole, and put her hand in it. RP 200. Rena recalled screaming for her mother in the emergency room. RP 201. Prior to surgery, Rena was told she had a skull fracture. RP 202. Her right side was completely numb after surgery,

and she still suffered from numbness and lack of sensation at the time of the trial. RP 202-03. She is able to move her limbs, but doesn't feel it when someone touches her. RP 203.

Jon Riggs, Aaron's roommate, was home on the night of the attempted murder. RP 109. He woke up to screaming and yelling, and heard a woman scream. RP 109. He found Morrison in the doorway of Aaron's room, while Aaron was against the wall and Rena was on the floor. RP 110. He looked down and saw Morrison holding a hammer. RP 110. He asked Morrison why he had a hammer, and Morrison replied that he was tired of people treating him like "shit," and that Rena was cheating on him. RP 110. Not yet realizing the extent of Aaron and Rena's injuries, or knowing that the hammer had been used, Jon told Morrison to leave. RP 111. The room had been dark, and when Jon turned on the light he then saw blood everywhere and found Aaron in shock. RP 111-12. Jon didn't see signs that Morrison was intoxicated, although he assumed he was based upon the outlandishness of his actions. RP 112. Jon and Aaron have hammers and other tools in their garage, and Morrison had been in the garage before. RP 117. Rena was flopped backwards like a dead fish. RP 118.

Aaron suffered a fractured skull and a subarachnoid brain hemorrhage. RP 237-39. Rena suffered a severe depressed skull fracture

that resulted in pieces of her skull pushing into her brain like shards. RP 242-43. Both the inner and the outer surface of the skull were pushing into her brain. Id. She underwent surgery. RP 244. Rena's injury could have led to infections such as fatal meningitis, and there can be permanent damage to the nerves. RP 256. Rena's injury was to an eloquent area of the brain, responsible for function, strength and sensation on her right side. RP 257-58. Her skin around the laceration was also macerated and devascularized. RP 258-59.

Although he did not testify at his trial, Morrison gave his account of what occurred to Dr. Richard Yocum, who is a forensic psychologist with Western State Hospital. RP 297. Morrison told Dr. Yocum that at the Main Street Bar, he was upset because he thought Rena and Aaron were flirting with each other and that Rena was paying more attention to Aaron than to him. RP 305. Morrison also said that he had an altercation with an ex-boyfriend of Rena's while at the bar. RP 305. Marcus said he went inside and told Aaron they needed to leave. RP 309. But while he waited outside, no one came out. RP 310. He then walked to their friend Tanya's house, but when no one showed up he went back to the bar. RP 310. He began calling both Aaron and Rena. RP 310-11. Rena didn't answer, but Aaron did. RP 310. Aaron told him Rena had left, and he asked Aaron for a ride. RP 311. Aaron said he would have to think about it. RP 311. After

trying unsuccessfully to reach Rena again, Morrison called Aaron back and asked Aaron if Rena had left with anyone. RP 311. Aaron now said that he had dropped Rena off at her friend Maryann's, and Morrison noted the change in Aaron's story. RP 311. Morrison walked to a Chevron station, and ultimately got a ride part of the way to Maryann's. RP 311. He walked the remainder of the distance to Maryann's. RP 311. Morrison went to the back of the house to the room where he expected to find Rena but she wasn't there. RP 312. At that point, Morrison went to Aaron's house (presumably by walking). RP 312. Upon reaching Aaron's house Morrison let himself in through the unlocked door. RP 312.

The first thing Morrison noticed upon entering the house was that no one was sleeping on the couch. RP 312. He then went to Aaron's son's room to see if Rena was there but she wasn't. RP 312. Morrison then went to Aaron's room. RP 312. He tapped the door open and saw Rena and Aaron inside. RP 313. He felt his chest constrict and he thought, why? RP 313. Morrison then went to the garage, claiming that he went there to exit the house. RP 313. However, that was not the way he entered the house. When he entered the garage, he noticed that the garage door was closed and claimed that he didn't want to wake everyone by opening the door. RP 313. Instead, he decided to arm himself with a hammer and return to Aaron's bedroom. RP 313. Upon reaching Aaron's bedroom, he opened

the door quietly. RP 313. He got up next to Aaron and struck him on the right side of the head with the hammer. RP 313. Aaron started making “weird sounds.” RP 313. He waited for Aaron to wake up. RP 314. When Aaron woke, Morrison claimed that he began saying, “we didn’t do anything.” RP 314. While Morrison paused his hammer attack, Aaron continued to say, “we didn’t do anything.” RP 314. As Aaron continued to say this, Morrison became more frustrated. RP 314. He then began hitting Aaron with the hammer again. RP 314. Morrison told Dr. Yocum that he was hitting Aaron in the arm but the hammer would “roll onto Aaron’s head.” RP 314. Morrison then nudged Rena to wake her up, and she popped up and saw the bloodied Aaron. RP 314. Rena then began engaging in a movement that Morrison interpreted as her looking for her pants. RP 314. Morrison then grabbed the bed cover and pulled it off, seeing that both Aaron and Rena were unclothed from the waist down. RP 315. Morrison then began questioning Rena, and she also denied anything happened. RP 315. Rena began scooting down to the end of the bed, and Morrison told her to “shut up.” RP 315. He got tired of her denials and hit her in the head with the hammer. RP 315. Rena began making the same noises Aaron had made when he was hit. RP 315. Morrison smelled feces, and asked Aaron if he had defecated. RP 315. Aaron replied that he had. RP 315. When Jon Riggs arrived in the room, Morrison briefly considered

taking the hammer to him as well. RP 316. Morrison said he felt “insignificant.” RP 316. Instead, he left the house when Riggs told him to leave. RP 316.

Morrison was convicted of two counts of attempted first degree murder. CP 236, 240. This timely appeal followed.

C. **ARGUMENT**

I. **THE EVIDENCE IS SUFFICIENT TO SUSTAIN THE JURY’S FINDING OF PREMEDITATION.**

Morrison claims the evidence is insufficient to sustain the jury’s finding that he acted with premeditation. This claim is meritless.

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. Amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn.App. 789, 796, 137 P.3d 893 (2006). When determining whether there is sufficient evidence to support a conviction, the evidence must be viewed in the light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). If “any rational jury could find the essential elements of the crime beyond a reasonable doubt”, the evidence is deemed sufficient. *Id.* An appellant challenging the sufficiency of evidence presented at a trial “admits the truth of the State’s evidence” and all reasonable

inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

“Criminal intent may be inferred from circumstantial evidence or from conduct, where the intent is plainly indicated as a matter of logical probability.” *State v. Billups*, 62 Wn.App. 122, 126, 813 P.2d 149 (1991), citing *State v. Caliguri*, 99 Wn.2d 501, 506, 664 P.2d 466 (1983) and *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The appellate court’s role does not include substituting its judgment for the jury’s by reweighing the credibility of witnesses or importance of the evidence. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). “It is not necessary that [we] could find the defendant guilty. Rather, it is sufficient if a reasonable jury could come to this conclusion.” *United States v. Enriquez-Estrada*, 999 F.2d 1355, 1358 (9th Cir. 1993) (overruled in part on other grounds, *United States v. Peterson*, 140 F.3d 819, 822 (9th Cir. 1998)), (quoting *United States v. Nicholson*, 677 F.2d 706, 708 (9th Cir. 1982)).

The determination of the credibility of a witness or evidence is solely within the scope of the jury and not subject to review. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), citing *State v. Camarillo*,

115 Wn.2d 60, 71, 794 P.2d 850 (1990). “The fact finder...is in the best position to evaluate conflicting evidence, witness credibility, and the weight to be assigned to the evidence.” *State v. Olinger*, 130 Wn.App. 22, 26, 121 P.3d 724 (2005) (citations omitted).

Specifically with regard to premeditation,

Premeditation is “the deliberate formation of and reflection upon the intent to take a human life” and involves “thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short.” *State v. Finch*, 137 Wn.2d 792, 831, 975 P.2d 967 (1999) (quoting *State v. Pirtle*, 127 Wn.2d 628, 644, 904 P.2d 245 (1995) (quoting *State v. Gentry*, 125 Wn.2d 570, 597-98, 888 P.2d 1105 (1995); *State v. Ortiz*, 119 Wn.2d 294, 312, 831 P.2d 1060 (1992))). It must span more than a moment in time. RCW 9A.32.020(1).

State v. Allen, 159 Wn.2d 1, 147 P.3d 581 (2006).

In *Allen*, the defendant murdered his mother, after arguing with her, by strangling her with a telephone cord and hitting her with a rifle. *Allen* at 5-6. The Supreme Court found sufficient evidence of premeditation where the assault took place over an “appreciable period of time” prior to the strangulation. *Allen* at 7, citing *State v. Harris*, 62 Wn.2d 858, 868, 385 P.2d 18 (1963). Moreover, injuries inflicted by various means over a period of time can support a finding of premeditation. *State v. Bingham*, 105 Wn.2d 820, 825-26, 719 P.2d 109 (1986). Sufficient evidence of premeditation may also be found where the weapon used was not readily available, where multiple wounds are

inflicted, or where the victim was struck from behind. *State v. Gentry*, 125 Wn.2d 570, 599, 888 P.2d 1105 (1995).

In *State v. Condon*, 182 Wn.2d 307, 343 P.3d 357 (2015), the Supreme Court found sufficient evidence of premeditation where the defendant entered a home with the intent to commit a robbery, not necessarily a murder. The Court cited to *State v. Evans*, 145 Wash. 4, 11, 258 P. 845 (1927), in which the Court said, “A person can form a premeditated design to effect the death of another for the purpose of better enabling him to rob the person or premises of that other...” In other words, a person can enter the house with one intent and form the premeditated intent to kill after entering.

Here, the evidence demonstrates that Morrison went to Aaron’s house with the premeditated intent to kill Rena and Aaron. The reasonable inferences to be drawn from the evidence are that Morrison suspected Rena and Aaron of being interested in one another early in the evening at the Main Street Bar. When Morrison did not find Rena at her friend Maryann’s house, he immediately decided to go to Aaron’s—not Rena’s apartment. He got a ride part of the way and walked part of the way, giving him ample time to let his rage build and to form a plan. He snuck into Aaron’s house through an unlocked door rather than knocking, and quietly looked inside Aaron’s room. Seeing Rena there, he went to the

garage, where he knew, from prior visits to the home, there were hammers and tools, and armed himself with a hammer. He then quietly entered Aaron's bedroom and launched a surprise attack, striking Aaron in the temple with a hammer. By his own admission, he paused after the first blow and listened as Aaron repeatedly denied that anything was going on between him and Rena. Becoming even more enraged by these denials, Morrison acted with premeditation in commencing the hammer attack anew and repeatedly striking Aaron with the hammer, fracturing his skull and leaving him severely bloodied. During the attack, Rena woke and began screaming. All three parties agree that Morrison told her to shut up. What he actually said was, "shut up, bitch. You're next." He announced, in other words, his premeditated intent to murder Rena.

Even Morrison's account of seeing Rena and Aaron in bed together and then deciding to leave through the garage, but then changing his mind and arming himself with a hammer and returning to the bedroom, supports the jury's finding of premeditation. First, his stated intent to leave through the garage is not credible. He entered through the front door and would reasonably have left through the front door. He went to the garage to arm himself with the hammer. Second, his statement that he did not want to open the garage door for fear of waking the people in the house is not credible. If he feared waking the people in the house, he would not have

armed himself with a hammer and gone back to Aaron's bedroom to kill Aaron and Rena. Morrison had no intention of leaving the house. He went to the garage to get the weapon that would allow him to carry out his premeditated intent to kill Aaron and Rena. While in the bedroom, by his own account, he paused after the first blow to Aaron's head and listened as Aaron denied having done anything with Rena. This pause was a period of reflection. During this period of reflection, Morrison simply became more entrenched in his plan to kill Aaron and Rena. Finally, his statement to Rena, "shut up, bitch, you're next," conclusively proves that Morrison acted with premeditation.

The evidence of premeditation is overwhelming in the case and Morrison's claim fails.


D. CONCLUSION

The judgment and sentence should be affirmed.

DATED this 1st day of May, 2015.

Respectfully submitted:

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