

NO. 67958-9-I

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

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM S. GOBAT,

Appellant.

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STATE OF WASHINGTON

BRIEF OF RESPONDENT

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I. ISSUES

Was sufficient evidence presented for a rational trier of fact to find the defendant guilty of second degree murder beyond a reasonable doubt?

II. STATEMENT OF THE CASE

Defendant, William Scott Gobat, is a friend of Emily Clausen, a drug dealer. In December 2010, Clausen asked defendant to deliver some cocaine to Donald Barker. Defendant met Barker near Clausen's house and exchanged \$30 worth of cocaine for an apparent roll of cash. Defendant returned to Clausen's house and gave her the roll. When Clausen opened it and saw that it was a \$1 dollar bill wrapped around a receipt she became angry. RP 335-336, 454-460.

Approximately two weeks later, on December 27, 2010, defendant was at Clausen's house; also present were Patrick Griffiths, Antonio Ruiz, and Cara Jean Ford. At some point Clausen asked if defendant, Griffiths or Ruiz would go pick up some money from someone. Defendant, Griffiths and Ruiz left Clausen's house together. Defendant did not know who they were going to meet. RP 263, 266, 271-272, 461-462, 464-467.

Griffiths drove to Madison Elementary School in Everett, Washington, a few blocks from Clausen's house, and parked in the school parking lot. As defendant, Griffiths and Ruiz got out of the vehicle they saw a man waiving at them some distance from the parking lot. The man was Donald Barker. The three men walked up to Barker, defendant punched Barker in the face, Griffiths and Ruiz joined in assaulting Barker. At some point Barker broke away and ran towards the parking lot with Griffiths and defendant in pursuit. Defendant fell and Griffiths caught Barker. Barker pushed Griffiths to the ground and held him. Almost immediately, defendant and Ruiz pulled Barker off Griffiths. Barker ended up on all fours on the ground. Griffiths heard defendant say, "Where's the money." Griffiths picked up Barker's cell phone from the ground and walked back to the vehicle. Defendant and Ruiz join Griffiths at the vehicle and drove back to Clausen's house. RP 259, 273-278, 281-287, 308-314, 316-321, 325-328, 397, 466-472.

Griffiths told Ford that he had just been in a fight and that he kneed Barker in the face. Ford observed blood on Griffiths' pants and shoelaces. Ruiz handed Ford a knife in a sheath and asked her to hide it. When Clausen and Ford cleaned the knife in the shower Ford saw blood on the blade. Ruiz demonstrated to Ford

how he stabbed Barker, that Griffiths and defendant did not know, and that he acted alone in stabbing Barker. RP 284-287, 305-306, 342-345, 349-351, 363-364, 368-369.

Barker received two stab wounds, one in his abdomen that pierced his liver, and one to his lower back. Barker also received blunt force trauma to his head that caused bleeding inside his skull. Barker died that night from injuries he sustained in the assault, either the subdural hemorrhaging or the stab wound that pierced his liver. RP 131, 414-418, 426, 430-434.

Defendant was charged with second degree murder, as either a principal or an accomplice, based on the predicate crime of second degree assault. CP 65-66, 139-140. The jury found defendant guilty as charged. CP 4, 32; RP 550-551.

III. ARGUMENT

A. THERE WAS SUFFICIENT EVIDENCE FOR A RATIONAL TRIER OF FACT TO FIND BEYOND A REASONABLE DOUBT THE DEFENDANT GUILTY OF SECOND DEGREE MURDER.

Defendant argues the evidence was insufficient to support his conviction for second degree murder; specifically that the evidence was insufficient to show that he was either a principal in the assault on Barker, or that he was involved in the assault in a

manner that made him liable as an accomplice to Griffiths' or Ruiz' assault on Barker. Appellant's Brief 9-13.

1. Legal Standards.

Sufficiency of the evidence is a question of constitutional magnitude which a defendant may raise for the first time on appeal. State v. Alvarez, 128 Wn.2d 1, 9, 904 P.2d 754 (1995); State v. Atterton, 81 Wn. App. 470, 472, 915 P.2d 535 (1996). When reviewing a challenge to the sufficiency of the evidence, the court determines whether, after viewing the evidence 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. State v. Brockob, 159 Wn.2d 311, 336, 150 P.3d 59 (2006); State v. Hughes, 154 Wn.2d 118, 152, 110 P.3d 192 (2005). All reasonable inferences are drawn in the prosecution's favor and interpreted most strongly against the defendant. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence are equally reliable. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004); State v. Delmarter, 94 Wn.2d 634,

638, 618 P.2d 99 (1980) (“In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence.”). The court need not be convinced of the defendant’s guilt beyond a reasonable doubt; it is sufficient that substantial evidence supports the State’s case. State v. Galisa, 63 Wn. App. 833, 838, 822 P.2d 303 (1992), citing State v. McKeown, 23 Wn. App. 582, 588, 596 P.2d 1100 (1979). Evidence favoring the defendant is not considered. State v. Randecker, 79 Wn.2d 512, 521, 487 P.2d 1295 (1971) (negative effect of defendant’s explanation on State’s case not considered); State v. Jackson, 62 Wn. App. 53, 58 n. 2, 813 P.2d 156 (1991) (defense evidentiary inference cannot be used to attack sufficiency of evidence to convict).

In testing the sufficiency of the evidence, the reviewing court does not weigh the persuasiveness of the evidence. Rather, it defers to the trier of fact on issues involving conflicting testimony, credibility of witnesses, and the weight and persuasiveness of the evidence. Delmarter, 94 Wn.2d at 638. Credibility determinations are for the trier of fact and cannot be reviewed on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The court must 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, 874-875, 83 P.3d 970 (2004); State v. Asaeli, 150 Wn. App. 543, 567, 208 P.3d 1136 (2009).

2. Second Degree Murder.

(1) A person is guilty of murder in the second degree when:

(b) He or she commits or attempts to commit any felony, including assault, other than those enumerated in RCW 9A.32.030(1)(c), and, in the course of and in furtherance of such crime or in immediate flight therefrom, he or she, or another participant, causes the death of a person other than one of the participants;

(2) Murder in the second degree is a class A felony.

RCW 9A.32.050(1)(b), (2). Defendant was charged with second degree murder. CP 65-66 (Amended Information); see also 45 (Jury Instruction 10, WPIC 27.04). The jury was instructed on accomplice liability. CP 54 (Jury Instruction 18, WPIC 10.51).

3. To Convict Defendant As A Principal.

To convict defendant of second degree felony murder, the State needed to prove beyond a reasonable doubt that he, or an accomplice, (1) committed or attempted to commit (2) a felony, (3) “and, in the course of and in furtherance of” committing that felony or in the immediate flight therefrom, (4) caused Barker’s death. RCW 9A.32.050(1)(b). Because the alleged predicate felony here

is second degree assault, the State also needed to prove beyond a reasonable doubt that defendant, or an accomplice, intentionally assaulted Barker and thereby recklessly inflicted substantial bodily harm. RCW 9A.36.021(1)(a). A person acts intentionally when he acts "with the objective or purpose to accomplish a result which constitutes a crime." RCW 9A.08.010(1)(a). "[S]pecific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability." State v. Johnson, 159 Wn. App. 766, 774, 247 P.3d 11 (2011) (quoting Delmarter, 94 Wn.2d at 638).

4. To Convict Defendant As An Accomplice.

To convict defendant as an accomplice to second degree felony murder, the State needed to prove beyond a reasonable doubt that defendant, with knowledge that it would promote or facilitate the commission of the second degree assault that resulted in Barker's death, (1) solicited, commanded, encouraged, or requested another person to commit the crime; or (2) aided or agreed to aid another person in planning or committing the crime. RCW 9A.08.020(2)(a) and (3)(a). See CP 54 (Jury Instruction 19, WPIC 10.51). Accomplice liability requires an overt act. State v. Matthews, 28 Wn. App. 198, 203, 624 P.2d 720 (1981). Mere

presence is insufficient to prove complicity in a crime. State v. Roberts, 80 Wn. App. 342, 355–56, 908 P.2d 892 (1996). An accomplice need not have knowledge of each element of the principal's crime in order to be convicted under RCW 9A.08.020. General knowledge of “the crime” is sufficient. State v. Roberts, 142 Wn.2d 471, 513, 14 P.3d 713, 736 (2000). An accused who is alleged to be an accomplice to a second degree assault must have known generally that he was facilitating an assault but need not have known that the principal was going to use deadly force or that the principal was armed. State v. McCreven, ____ Wn. App. ____ 284 P.3d 793, 809-810 (2012) citing Sarausad v. State, 109 Wn. App. 824, 836, 39 P.3d 308 (2001).

5. Evidence In The Present Case.

The evidence shows that Barker's death resulted from the injuries he sustained from the assault at Madison Elementary School on December 27, 2010; either the subdural hemorrhaging or the stab wound that pierced his liver. RP 430-434. The medical examiner concluded that the injuries to Barker's face were caused by blunt force to his head sufficient to cause the subdural hemorrhaging. The evidence shows that defendant struck Barker in the face. RP 227-228, 311, 326, 468. The evidence also shows

that Griffiths struck Barker in the head and that Ruiz stabbed Barker. RP 342-343, 354-355. A reasonable trier of fact could have found that defendant inflicted the fatal blow to Barker's head. Additionally, a reasonable trier of fact could have found that defendant knowingly aided both Griffiths and Ruiz during the assault on Barker and thereby acted as an accomplice.

Viewing the evidence and reasonable inferences in the light most favorable to the State, any rational trier of fact could have found defendant guilty of the assault-based murder of Barker. Salinas, 119 Wn.2d at 201; McCreven, ____ Wn. App. ____, 284 P.3d 793, 809. Defendant actively participated as a member of the group that intentionally assaulted Barker and thereby recklessly caused his death. Through his participation defendant was clearly liable as either an accomplice or principal to second degree murder. Sufficient evidence supported the jury's verdict.

Defendant argues that the evidence was insufficient to support the jury's verdict; specifically, that the evidence was insufficient to support the jury finding that he, rather than Griffiths or Ruiz, caused Barker's death; and that the evidence was insufficient to support the jury finding defendant acted with knowledge that he was facilitating a murder. Appellant's Brief 12-13.

Defendant's reliance on State v. Cronin, 142 Wn.2d 568, 14 P.3d 752, 759 (2000) for the principle, that in order to convict a person as an accomplice for the crime of murder the State must prove beyond a reasonable doubt the individual had general knowledge he was aiding in the commission of a murder, is misplaced. Appellants Brief 11. What the Court said in Cronin was: "In order to convict Cronin as an accomplice to *premeditated murder*, the State had to prove beyond a reasonable doubt that Cronin had general knowledge that he was aiding in the commission of the crime of murder." Cronin, 142 Wn.2d at 581-582 citing State v. Rice, 102 Wn.2d 120, 125, 683 P.2d 199 (1984) (emphasis added). The Court reversed Cronin's conviction for premeditated first degree murder based on the legally deficient jury instruction regarding accomplice liability, but affirmed his conviction for first degree felony murder. Cronin, 142 Wn.2d at 586. In Rice the Court said:

[A]ssuming [defendants] were charged as accomplices to felony murder, the State would only have been required to prove their knowledge of their coparticipant's criminal assault on the victim. It would have been unnecessary for the State to prove the defendants' actual knowledge of their coparticipant's possession of a deadly weapon or his mental intent.

Rice, 102 Wn.2d at 125-26.

The evidence presented in the present case was sufficient for the jury to find beyond a reasonable doubt that on the 27th day of December, 2010, defendant or an accomplice committed the crime of second degree assault, that in the course of and in furtherance of that crime or in immediate flight from that crime, defendant or an accomplice caused the death of Donald Barker, that Barker was not a participant in the crime of second degree assault, and that the acts occurred in Washington. The evidence was sufficient to support the jury's verdict. Accordingly, defendant's conviction for second degree murder should be affirmed.

IV. CONCLUSION

For the reasons stated above, defendant's conviction should be affirmed.

Respectfully submitted on October 4, 2012.

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