

No. 462435

THE COURT OF APPEALS DIVISION II
IN THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

JOHN B. JONES, Appellant

APPEAL FROM THE SUPERIOR COURT
OF PIERCE COUNTY

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

- A. The Evidence Was Insufficient To Sustain A Conviction For Murder Second Degree.
- B. The Trial Court Erred In Making Finding of Fact 7: "The autopsy conclusively established that Mr. Williams had been intentionally killed by manual strangulation..." (CP 481).
- C. The Trial Court Erred In Making Finding of Fact 11: "On Tuesday, March 20, 2012, in the late afternoon or early evening the defendant was not in his room. By that time the body of Mr. Williams had been substantially dismembered and packaged..." (CP 484).
- D. The Trial Court Erred in Making Finding of Fact 12: "...The gloves also were conclusively found to contain DNA from both the defendant and Mr. Williams." (CP 484).
- E. The Trial Court Erred in Making Finding of Fact 13: "His reason for sleeping downstairs was that he had already killed, dismembered, and packaged the body of Mr. Williams for disposal. He had left the body packaged in the way that the police found it in his room...." (CP 484).

F. The Trial Court Erred In Making Conclusion of Law 3: "...The defendant is guilty of the crime of Murder in the Second Degree." (CP 488).

Issues Relating to Assignments of Error

Was the evidence insufficient to sustain a conviction for murder in the second degree?

II. STATEMENT OF FACTS

Twenty-seven year old John Jones lived with his mother, Esther Jordan, at her home, along with his teenage brother (Andrew), his uncle (Daniel), and his mother's friend William Calvert.¹ RP 557. Jones was unemployed and received a small amount of income from SSI. RP 1246; CP 39. Fifty-seven year old Wayne Williams, a friend of Jones, regularly stayed at the home in Jones' bedroom beginning in mid-February. RP 351;557; 916;1241.

Mr. Jones had numerous homeless acquaintances that often came to the home at all hours to smoke marijuana or methamphetamines, listen to music, play video games, and sleep in

¹ Both Andrew and Daniel share the last name of Jordan. First names are used for clarity. No disrespect is intended.

his bedroom. RP 341; 343; 347; 939-942;1074; 1235; CP 39. Ms. Jordan told Jones she had concerns about these overnight guests and did not want them staying in her home. RP 1252. However, several of these acquaintances were at the home on or about the weekend of March 17th and 18th. RP 351.

Ms. Jordan reported that one of the acquaintances, Carl, did not get along with Williams. RP 1317. She stated that he left numerous things at her home in Jones' room, and often showered and ate at her home. RP 1315; 1319;1325. She testified that he was there the weekend that Williams died. RP 1325. He may also have had a key to her house. RP 1325.

On that same weekend, Jones and Williams straightened up and cleaned their bedroom. RP575; 609; 1244. On the evening of Monday, March 19, Ms. Jordan brought up plates of dinner to Jones and Williams in Jones' room. She saw both men. RP 1256-57. She noticed the bedroom was tidy at that time. Id.

Witnesses later testified that on either March 18 or March 19, Jones told them that if someone came looking for Williams, to say he was not there. RP 927; 1280. Andrew, stated that on either March 18 or March 19 he heard a voice from Jones' bedroom say "F-- you", but he did not know whose voice he heard. RP 1089.

Although Ms. Jordan denied it at trial, she initially told police that Jones and Williams had gotten into an argument and when Williams told Jones to “F-- off” Jones told him to leave the house. RP 1282. Daniel testified he did not hear any type of argument or fighting between March 18 and March 21. RP 618.

On Tuesday, March 20, Calvert, Ms. Jordan and Andrew returned home between 6 and 7 p.m.; Jones was in the bathroom combing his hair. RP 1267. That night, Jones watched television and fell asleep on a downstairs couch. RP 918. Ms. Jordan reported she did not smell any unusual odors that evening or the next morning. RP 1267.

On March 21st, between 6:30 and 6:45 am Ms. Jordan drove Andrew and his girl friend to school. RP 1040; 1290. When she returned, she noticed a foul smell in the home. RP 1290. Although she reported she spent the next two to three hours cleaning, officers later testified there were dirty clothes on the floor, the kitchen was dirty, and there was cat hair and debris on the rugs downstairs. RP1015-16; RP 1291.

Ms. Jordan traced the foul odor as coming from Jones’ bedroom. She opened the door to look in and saw the room completely ransacked. RP 1292. She went downstairs to wake

Jones up to tell him, “that they had ransacked his room and when was he ever going to learn his lesson for helping people.” RP 1293. She brought her friend Calvert up to the room to show him the mess. RP 1293. She then brought Daniel up to the room to show him the mess. RP 1295.

Ms. Jordan “tiptoed through all the mess” and lifted up a corner of the tarp. She stated, “I saw that somebody was still sleeping there. I saw his arm first and his face.” RP 1297. She noticed that he was not breathing. RP 1297. She thought Williams must have died of a drug overdose or a heart attack. RP 1305. She told Jones to come to the room because there was a dead body. RP 1300. She reported Jones “freaked out” and wanted it out of his room. RP 1302.

Calvert reported that when he looked in the room, the body was entirely covered. RP 971. However, when Ms. Jordan and Daniel removed the tarp, he saw an arm and the face from the eyes downward. RP 974. Daniel reported that he also saw an arm and what he believed to be the head wrapped in sheets. RP 561. Approximately two and a half hours after Ms. Jordan returned home that morning the family called the police. RP 1643.

Officers testified that the odor coming from the house was shocking, and readily discernable. RP 177. They looked in the doorway of the bedroom and determined to get a search warrant to begin the investigation. RP 164. Officers assumed there was a body wrapped up in tent material. RP 168. There was also a blanket wrapped up and covering part of the tent. Only an area of the shoulder or arm was visible. RP 93. Because there were so many items strewn around the room, as they began to search Jones' ransacked room, they had to conduct the search by layers. RP 212; 647;762.

On the first day of the search Detective Vold found a plastic tote, which was removed to the hallway. RP 789. Inside, he found a pair of work gloves. RP 790. He removed the gloves, which had a blood spot on the right hand thumb. They were collected for evidence. RP 790-91. He also opened a black garbage bag located inside of the tote, and found a decapitated head- it was determined to belong to Williams. RP 787. The officers spoke to the medical examiners and were advised to leave the tote and its contents in another upstairs room until the next day. RP 781-82.

Officers interviewed everyone from the home. RP 81;98; 1484. Officer Wilkerson spoke with Jones and noticed Jones was

joking and laughing to himself. RP 33. He displayed what officers considered inappropriate affect, and there was a “feeling that something was not right” mentally. RP 23-24;35;81. Jones told officers that when his mother showed him the room he saw that it was ransacked. RP 54. He reported that he lifted up a yellow-brown blanket that was covering the body and that the blanket was twisted up like someone used it to keep Williams quiet. RP 54. He denied having anything to do with Williams’ death and dismemberment. RP 76.

On the second day, when officers resumed the search, they used the hallway as a staging area. RP 300. The area was not vacuumed and nothing was put on the floor to prevent cross-contamination. RP 623.

Officers lifted the tent covering Williams and found a knife and a handsaw laying on the body. RP 727. They discovered an arm in a black garbage bag in the bedroom, which they stored in the bathroom along with the plastic tote containing the head. RP 799. They also recovered a blue tent bag and without opening it, removed it to one of the upstairs bedrooms. RP 797. Several days after the officers had finished investigating the scene, Ms. Jordan

called to let them know the blue tent bag was still at the house and contained Williams' legs. RP 692; 1000.

POSSIBLE CAUSE OF DEATH

The medical examiner determined the cause of death was most likely manual strangulation, based on a fractured hyoid bone. RP 859; 864. He could not however, say with absolute certainty that strangulation caused Williams' death, as strangulation is not necessarily fatal. RP 884. He also speculated that it probably took hours to dismember the various body parts. RP 856.

There were numerous puncture wounds, likely caused by screwdrivers and knife on the head, arm, and hands. Most of the wounds were obviously post-mortem and he was not able to say whether any of them occurred pre-mortem. RP 835;838;839;844; 879-880.

Regarding the time of death, the medical examiner stated it was not really possible to estimate within a range. RP 868. The most he could say was that the body was dead for at least 24 hours from the time he became involved on the second day of the investigation. RP 868.

FORENSIC TESTING

The medical examiner's office supplied the Washington State Patrol Crime lab with a filter paper card bearing red staining, reported to be a reference sample from Williams. RP 1211. The sample, however, was weak with very low levels of DNA, and could not be used for comparison testing. RP 1212. So instead, the technician used a pair of stained underpants that police told him were removed from Williams' body. RP 1198; 1213. There was no secondary control to determine if in fact the biological sample was that of Williams. RP 1213.

Swabs from a blood stain on a pair of blue jeans belonging to Jones, confirmed a mixture of DNA from Jones and what the technician believed to be the DNA of Williams. RP 1206-08. Mr. Jones' fingerprints were also found on some unused black garbage bags, which he regularly kept in his room to store his personal belongings. RP 467-68.

The gloves found in the tote had a blood stain on the right glove that contained a DNA profile consistent with a mixed profile of Jones and what was believed to be the DNA from Williams. RP 1218. The forensic specialist testified there was no way of knowing when the DNA was deposited in the glove; it was possible that both

Williams and Jones had both worn the gloves at some point. RP 1219. The left glove was never tested. RP 1216-17.

Forensic testing for Jones' fingerprints on the knife was negative. RP 641;1126. Detective Vold testified the knife appeared to have staining on it that would be consistent with blood. RP 809. It was not tested for blood or human tissue. RP 642. Detective Vold also reported the saw was stained and appeared to have tissue or other debris lodged in the teeth of the saw. RP 809. It was not tested for fingerprint comparison, nor was it tested for blood. RP 1127; 1198. Flathead and Phillips-head screwdrivers also found in the same bedroom were not tested for blood. RP 642. They were examined for fingerprints, and the finding was negative. Id.

CHARGING AND STAYS

On March 26, 2012, John Jones was charged with the crime of first -degree murder in the death of Wayne Williams. CP 6. The information was amended February 14, 2014 to include an allegation of being armed with a deadly weapon other than a firearm. CP 360.

On August 10, 2012, the trial court ordered Mr. Jones to undergo a mental health evaluation to determine competency to

stand trial. CP 22-26. On September 14, 2012, after receipt of the psychiatric report from Western State Hospital (WSH), Mr. Jones was found competent. CP 31-32. "Malingering" was the principal Axis I diagnosis. CP 43.

He was returned to the jail and by November 16, 2012, Mr. Jones' condition had deteriorated significantly and the court again ordered an examination for competency at WSH. CP 80-83. He was committed for a 90-day stay, which was extended on March 28, 2013. CP 88-90;96-99. The forensic report filed June 12, 2013, indicated Mr. Jones had presented with symptoms of a major mental illness, which included catatonia, mutism, psychosis, and mood instability. CP 106-120. After the 180 -day stay, the psychologist opined that Mr. Jones appeared to be competent so long as he remained on the prescribed psychiatric medication. CP 106-120. The court found Mr. Jones competent to stand trial. CP 121-122.

WAIVER OF JURY TRIAL AND VERDICT

Mr. Jones waived his right to a jury trial. CP 381-82. Defense counsel maintained that the police department had conducted an inferior investigation raising issues of cross-contamination, failure to pursue other suspects, and mishandling of

evidence. (2-3-14 RP 7-18; RP 1696-1775). After presentation of the State's case, Jones made a motion to dismiss, as the State's evidence was insufficient, as a matter of law, to sustain the charge. CP 389-91. The motion was denied. RP 1695. The court found Mr. Jones guilty of the lesser-included offense of murder in the second degree and found that he was not armed with a deadly weapon at the time. CP 428-449. Mr. Jones makes this timely appeal. CP 457.

III. ARGUMENT

The Evidence Was Insufficient To Sustain A Conviction For Second-Degree Murder.

Sufficiency of the evidence is a question of constitutional magnitude and may be raised for the first time on appeal. *State v. Baeza*, 100 Wn.2d 487, 488, 670 P.2d 646 (1983). The standard for determining the sufficiency of the evidence in a criminal case is "whether, after reviewing 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. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). An essential element of a crime is one that must be proved to establish the

illegality of the behavior. *State v. Johnson*, 119 Wn.2d 143, 147, 829 P.2d 1078 (1992). In a challenge to the sufficiency of the evidence, the defendant admits the truth of the State's evidence and all reasonable inferences that can reasonably be drawn from it. *State v. Colquitt*, 133 Wn.App. 789, 137 P.3d 892 (2006).

Circumstantial evidence is as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Speculation and conjecture are not a valid basis for upholding a guilty verdict. *State v. Prestegard*, 108 Wn.App. 14, 42-43, 38 P.3d 817 (2001).

To convict for the crime of murder in the second degree, each of the following elements must be proved beyond a reasonable doubt: That the defendant acted with intent to kill and the victim died as a result of those actions. RCW 9A.32.050(1).

In this matter, the whole of the State's evidence to prove Mr. Jones intentionally killed Wayne Williams consisted of the following: First, the deceased was found in Mr. Jones' bedroom. Second, it was likely, although not absolutely certain, that Mr. Williams had been manually strangled resulting in his death. Third, there were small blood stains which purportedly contained the DNA profile of Mr. Williams on a glove and a pair of blue jeans, and both of which contained a DNA profile consistent with Mr. Jones. And lastly, Mr.

Jones' fingerprints were found on two black plastic garbage bags in his room, that were similar to the type used to dispose of the body parts. What the State did not present was any evidence that Mr. Jones was involved in causing Mr. Williams' death.

The State made much of the fact that Ms. Jordan, Calvert, and Andrew were away from the house the majority of Tuesday, March 20. However, assuming that is a fact, it does not amount to evidence that Jones was there alone with Williams. During the charged timeframe, numerous homeless individuals came and went from the Jordan home, and at least one of those individuals did not get along with Williams. The trial court's Finding 6, that between Monday evening and before Tuesday evening "no one was seen coming from or going to or inside of the defendant's room other than the defendant" implies that no one entered the home. However, it is based entirely on speculation, as the residents were not there to observe any comings or goings by others.

Ms. Jordan and Calvert testified when they lifted the tarp on Wednesday morning, they saw both an arm and a *face*. Daniel testified he saw Williams' arm and a sheet wrapped around his head. By the time police officers arrived, some two and a half hours later, Mr. Williams' body had been dismembered and

packaged. The trial court's finding 11, that by Tuesday, March 20, the body had been substantially dismembered is in error based on the testimony of three eyewitnesses. Although credibility determinations are left to the trier of fact, the findings of fact must be supported by substantial evidence. *Group Health v. Dept. of Revenue*, 106 Wn.2d 391, 397, 722 P.2d 787 (1986). Substantial evidence is that character of evidence which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. *State v. Boyd*, 21 Wn.App. 465, 586 P.2d 878 (1978). Here, the three eyewitnesses each testified the head had not been removed at the time they viewed the body. There is no evidence from any rational trier of fact could conclude otherwise.

The State's theory was that the dismemberment of the body was evidence of Jones' guilt. However, it did not present any evidence of Jones fingerprints or Williams' blood on the saw, knife, or screwdrivers. The items that were tested were negative for Jones' fingerprints. The State did not test nor produce any evidence to support the theory that Jones was involved in dismembering the body. Further, the State presented no evidence that Williams' blood or tissue was on any of the items it offered as implements of the dismemberment.

Moreover, the two small blood stains (on a glove that was located in the tote and on a pair of blue jeans) do not account for the amount of trauma that Williams' body encountered post-mortem. Further, the entire room had been ransacked. The only injury on Mr. Jones was a tiny abrasion on his right little finger. (RP 1508).

The medical examiner testified that manual strangulation was the most likely cause of death because of the broken hyoid bone. However, he would not state it with absolute certainty, as strangulation is not necessarily fatal. Equally significant, assuming that Williams did die of strangulation, not only was there no evidence Mr. Jones was the actor, but there was no showing of intentionality. In *State v. Bingham*, 105 Wn.2d 820, 826, 719 P.2d 109 (1986), the Court considered whether a strangulation death showed evidence of premeditation. In reasoning on that issue, the Court made a poignant observation: "Holding a hand over someone's mouth or windpipe does not necessarily reflect a decision to kill the person, but possibly only to quiet him or her." *Id.* Without more evidence, it cannot be said that anyone intentionally killed Williams.

While it is clear that Mr. Williams likely died in that upstairs bedroom, in cases involving only circumstantial evidence and a series of inferences, the essential proof of guilty cannot be supplied by a pyramiding of inferences. *State v. Weaver*, 60 Wn.2d 87, 89, 371 P.2d 1006 (1962). A conviction must be supported by substantial evidence, that is, evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Collins*, 2 Wn.App. 757, 759, 470 P.2d 227 (1970).

Insufficiency of the evidence to prove all elements of a crime beyond a reasonable doubt requires the conviction to be reversed and dismissed. *State v. Teal*, 117 Wn.App. 831, 837, 73 P.3d 402 (2003). Credibility must be decided by the finder of fact; however the evidence in this case, even under the test announced in *Green*, demands reversal of the conviction.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Jones respectfully asks this Court to reverse his conviction and dismiss with prejudice.

Respectfully submitted this 7th day of January 2015.

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CERTIFICATE OF SERVICE

I, Marie J. Trombley, attorney for Appellant Frank Brugnone, do hereby certify under penalty of perjury under the laws of the United States and the State of Washington, that on January 7, 2015 that a true and correct copy of the Brief of Appellant was emailed per agreement between the parties or mailed by USPS first class, postage prepaid to the following:

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