

FILED
MARCH 12, 2015
Court of Appeals
Division III
State of Washington

NO. 31433-2-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

TERREK TREMAIN CORBIN,

Defendant/Appellant.

REPLY BRIEF

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ARGUMENT

The State is correct when it states that questions from the jury are not final determinations of their thought process. It is the verdict which represents their final decision. *State v. Miller*, 40 Wn. App. 483, 489, 698 P.2d 1123 (1985).

The problem is that the State elected to charge Terrek Tremain Corbin as both a principal and accomplice to felony murder. Count I of the Amended Information uses the disjunctive.

The State takes the position that it is immaterial as to whether or not the jury convicted Mr. Corbin as a principal or as an accomplice. The State's position ignores *State v. Carver*, 154 Wn.2d 71, 109 P.3d 823 (2005). The *Carver* Court held at 81:

... [W]here an individual who is charged with first degree murder based on the felony murder provision of the first degree murder statute has not participated directly in the commission of the predicate felony, the State must establish that he or she was an accomplice to the predicate felony in order to sustain a conviction. Only when his or her complicity in the underlying felony has been established does the coparticipant clause of the felony murder provision of the first degree murder statute operate to impute criminal liability for the homicide committed in the course of or in the furtherance of the felony.

The State argues that a jury could draw reasonable inferences from the evidence presented to conclude that Mr. Corbin was the principal actor in the events. The State relies upon circumstantial evidence to support its argument.

There is a difference between circumstantial evidence and speculation.

Circumstantial evidence, as that term is commonly understood in criminal law, means proof of such facts or circumstances connected with or surrounding the commission of the offense charged as to tend to show the guilt or innocence of the accused.

State v. Gillingham, 33 Wn.(2d) 847, 854, 207 P.2d 737 (1949).

On the other hand, speculation means “the act or practice of theorizing about matters over which there is no certain knowledge.” BLACK’S LAW DICTIONARY (9th ed.)

Mr. Corbin contends that the State’s argument is speculative. The State sets forth in its brief the following items which it contends support reasonable inferences for a jury to draw concerning Mr. Corbin’s involvement in the charged offense(s):

1. the discarded murder weapon was in **his** hat,
2. **his** jacket that was found with the murder weapon,
3. the black bandana found in **his** jacket pocket,

4. **him** fleeing the morning after the murder;
5. **his** incriminating and inconsistent statements to police, and
6. **his** incriminating phone calls from jail on the PIN numbers of other inmates.

Mr. Corbin's DNA was on the hat. The hat, still retaining the price tag, was brand new. Unfortunately for the State no witness testified that any of the individuals who entered the residence on the night in question was wearing a hat.

The State did not establish that the jacket was Mr. Corbin's. No DNA was located on it. The blood stain on the jacket could not be identified. A generic hoodie which is manufactured in the hundreds of thousands, or even the millions, cannot be linked to a specific individual without something more than a photograph.

Mr. Corbin concedes that he could not be excluded from the DNA located on the bandana. However, the DNA was not positively attributed to him.

Flight may be used as circumstantial evidence of guilt. Guilt of what? Mr. Corbin argues that his connection to the offense(s) is so tenuous under the State's theory that only speculation could have convinced the jury to find him guilty.

Since it is unknown whether the jury found him guilty as a principal or as an accomplice, the jury note included with his original brief allows for a reasonable inference that the jury found him guilty as an accomplice. The note states:

If we believe that the defendant was involved as an accomplice, but not one of the three who entered the house, can we find him guilty of the charges brought against him?

The trial court's response was "refer to the instructions as given."

Appendix "B" of the original brief sets forth Instruction No. 8 in its entirety. The instruction pertains to accomplice liability. The trial court's response to the jury directed the jury back to the instructions. Since their question pertained to accomplice liability Instruction 8 is the basis upon which they determined whether or not Mr. Corbin was involved.

Finally, the State's reliance upon so-called "incriminating statements" and "incriminating phone calls" is again speculative.

Mr. Corbin otherwise relies upon the argument contained in his original brief.

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DATED this 12th day of March, 2015.

Respectfully submitted,

s/Dennis W. Morgan

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COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	YAKIMA COUNTY
Plaintiff,)	NO. 11 1 00711 7
Respondent,)	
)	CERTIFICATE
v.)	OF SERVICE
)	
TERREK TREMAIN CORBIN,)	
)	
Defendant,)	
Appellant.)	
)	

I certify under penalty of perjury under the laws of the State of Washington that on this 12th day of March, 2015, I caused a true and correct copy of the and *APPELLANT'S REPLY BRIEF* to be served on:

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