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Court of Appeals
Division III
State of Washington

NO. 31433-2-III

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

TERREK TREMAIN CORBIN, Appellant.

BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUE PRESENTED BY THE ASSIGNMENTS OF ERROR

1. Was there sufficient evidence to support the elements of every count charged?

B. ANSWER TO THE ISSUE PRESENTED BY THE ASSIGNMENTS OF ERROR

1. There was sufficient evidence to support the elements of every count charged.

II. STATEMENT OF THE CASE

Corbin was charged with first degree murder, second degree assault, and first degree burglary, and three counts of attempted first degree robbery. The charges stemmed from the following facts:

On October 24, 2010, Mark Wallace was at home with his family: his wife of 19 years, Corey Wallace, his son, Brandon Wallace, and his daughter, Tiffany Willey. Everyone was sleeping except for Brandon who was playing videogames with a friend. RP 454. It was about 11:00 p.m. when Brandon and Tiffany heard a knock at the door. RP 456, 515. Brandon went and cracked the door open and a gun was put in his face. RP 456. He backed up and three men came through the door, each with a gun. RP 456-7, 519. One had a black semi-automatic pistol and the other

two had rifles or shotguns. RP 457-8. The one with the pistol said, "get on the ground" and hit Brandon in the head with the gun. RP 747.

Two males had black bandanas covering their faces and one had a mask on. RP 460-1. The man with the pistol was described as a black male with a black bandana covering his face and wearing a hooded sweatshirt or jacket with a hood. RP 460-1, 522. He was also described as being in front of the other two suspects. RP 457, 461. They were all in a pyramid shape, with one in front and two in the back. RP 519. One suspect in the back was also described as a black male with a black bandana covering his face. RP 461. The other suspect in the back had a Halloween mask on. RP 461.

After Brandon was hit, he called for his father who came out of his bedroom and told the men to leave. The man with the pistol then pulled the trigger, shooting Brandon's father in the chest. RP 463. The three guys then ran off. RP 463. Brandon's father died from the gunshot wound.

The murder weapon was described as a black semi-automatic handgun. RP 458. It was found by a janitor the next day in a dumpster at a community center located right across the street from Corbin's grandparents' house. RP 623, 751. The gun was in a hat that was sitting

on top of a black and white hoodie. RP 623, 625, 630. An officer found a black bandana in the pocket of the hoodie. RP 632. Officers took photos of the hat and the hoodie. SE 221-23, 226.

Corbin's probation officer, Officer McLean, testified that he recognized the discarded hoodie as one that Corbin wears. RP 647. He even took a photograph of Corbin wearing the hoodie on September 14, 2010, 40 days before the murder. RP 645, SE 197.

On December 15, 2010, Detective Gonzalo Deloza took a recorded statement from Corbin. RP 759, SE 258.[1] Corbin claimed to have an alibi: that he was at home with his cousin, Eric Graham; his friend, Lydia; the mother of his child, Kathryn Crawford; and his daughter on October 24th. RP 759, SE 258. At one point, he said he was there all day and the whole night. RP 759, SE 258. He admitted that the hoodie he was wearing in his probation officer's photo was his hoodie, but denied seeing it for some time. RP 762, 765, SE 258. He initially claimed he last saw the jacket a year and a half or two years prior. RP 776, SE 258. He guessed that someone took his jacket or that he misplaced it. RP 765, SE 258. He denied any involvement with the murder and denied having any guns at all. RP 763, 765, SE 258.

[1] The recorded statement is best transcribed in State's Identification 257. There is a motion pending to supplement the record with that exhibit.

While incarcerated, Corbin made some statements about keeping one, sometime two, guns on him. RP 857, SE 283[2]. He also made incriminating statements about whether other suspects were cooperating with the police. Multiple times he talked about a pistol, and also talked about "hitting licks," which is a slang term for committing robberies. RP 858-60, SE 283.

At trial, a forensic scientist testified that DNA from a single source male profile was found on the hat and that the DNA matched Corbin's DNA profile. RP 699. The forensic scientist testified that 1 in 12 trillion other individuals would be a match. RP 699-700. Corbin was also included as a possible contributor to DNA found on the black bandana in his hoodie. RP 700. The DNA on the bandana was a mixture of three persons, and Corbin's cousin was excluded as a contributor. RP 700-1.

Corbin called one witness, his cousin, Eric, to testify at trial. Eric said that they were hanging out on the 24th of October. He said that when he went to bed, Corbin was still at the house. RP 884-5. He said he woke up around 8 or 9 the next morning and that Corbin was there but left shortly after that and never came back. RP 885, 889.

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[2] The Clerk's Exhibit list does not indicate that SE 283 was published to the jury but the transcript is clear that it was played for the jury. The full version of the jail phone calls was contained in SE 284, 285, and 286, which were admitted but not published to the jury. The calls are best transcribed in State's Identification 292. The State has a pending motion to supplement the record with SI 292.

Corbin was found guilty of first degree murder, second degree assault, and first degree burglary. He was found not guilty of all the attempted first degree robbery counts. In addition, the jury found that Corbin was armed with a firearm and that the murder was in the course of the first degree burglary.

III. ARGUMENT

A. STANDARD OF REVIEW

Corbin claims that there is insufficient evidence to prove first degree murder, first degree burglary, and second degree assault. In reviewing a challenge to the sufficiency of the evidence, courts review the evidence in the light most favorable to the State to determine whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wash. 2d 216, 221, 616 P.2d 628 (1980). The verdict will be upheld unless no reasonable jury could have found each element proved beyond a reasonable doubt. State v. Gentry, 125 Wn.2d 570, 596-97, 888 P.2d 1105 (1995).

A challenge to the sufficiency of the evidence admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. State v. Theroff, 25 Wn. App. 590, 599, 608 P.2d 1254, aff'd, 95 Wn.2d 385, 622 P.2d 1240 (1980). The evidence is interpreted most

strongly against the defendant. Id. Evidentiary inferences favoring the defendant are not considered in a sufficiency of the evidence analysis. State v. Jackson, 62 Wn. App. 53, 58 n.2, 813 P.2d 156 (1991).

Circumstantial evidence may be used to prove any element of a crime. State v. Garcia, 20 Wn. App. 401, 405, 579 P.2d 1034 (1978). "In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence." State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Circumstantial evidence, alone, will support a criminal conviction. See State v. Mevis, 53 Wn.2d 377, 333 P.2d 1095 (1959), State v. Schrager, 74 Wn.2d 75, 442 P.2d 1004 (1968).

Corbin argues that there was no evidence to support the accomplice liability theory but does not argue that there was insufficient evidence to support the principle theory. The evidence could support one theory or both. Here, consistent with established case law, there were no findings as to which theory the jury believed. Corbin assumes it was the accomplice theory solely based on one question the jury had during the deliberation process. He argues, "The record reflects that the jury convicted Mr. Corbin as an accomplice." (Appellant's Brief at 9). The record does not reflect that. There is no finding as to how the jury voted.

There were no polls. There were no special verdicts. A correct statement is that the record is void of any findings as to how the jury voted. And that is allowed. A jury does not need to be unanimous as to the manner of an accomplice's and a principal's participation as long as all agree that they did participate in the crime. State v. Hoffman, 116 Wn.2d 51, 104, 804 P.2d 577 (1991). To state that the record reflects that the jury convicted Corbin as an accomplice is a misstatement of the record.

No assumptions can or should be made from the juror questions. Questions from the jury are not final determinations, and the decision of the jury is contained exclusively in the verdict. State v. Ng, 110 Wn.2d 32, 43-44, 750 P.2d 632 (1988) (citations omitted). The question could simply be a question that one juror had at one time but that does not equate to a finding of the jury that the defendant was solely an accomplice. Deliberations continued after the question was made. No one knows where the deliberations went from there. In order to protect the integrity of the jury system, a long-established cardinal requirement is that juries must deliberate in private, as was done in this case. It is quite possible that in the end, every single juror felt that Corbin was the principle and not an accomplice. Ultimately, we simply do not know how the jury came to their decision and it does not matter for purposes of a sufficiency challenge. The State simply has to have sufficient evidence to support the

elements of the crime. See State v. Matthews, 28 Wn. App. 198, 624 P.2d 720 (1981) (it is unnecessary for the State to establish which participating defendant was the principal and which was the abettor).

Counsel argues that the phrasing of the juror question "clearly indicates that the jury did not believe that Mr. Corbin entered the Wallace residence on October 24, 2010." (Appellant's Brief at 10). Again, the question does not indicate in any way what the jury believed or found at the end of the day. Nothing should be assumed from the question. To do so would be pure speculation. And again, it is really improper to speculate and guess what any of the jurors believed. That is not the standard for reviewing the sufficiency of the evidence.

B. THERE IS SUFFICIENT EVIDENCE THAT CORBIN COMMITTTED FIRST DEGREE MURDER.

The elements of first degree felony murder are set forth in jury instruction number 16:

> To convict the defendant of the crime of First Degree Murder in Count 1, each of the following elements must be proved beyond a reasonable doubt: (1) That on or about October 24, 2010, the defendant committed: (a) First Degree Burglary; and/or (b) Attempted First Degree Robbery; (2) That the defendant or an accomplice caused the death of Mark Wallace in the course of or in furtherance of such crime or in immediate

> flight from such crime; (3) That Mark Wallace was not a participant in the crime; and (4) That any of these acts occurred in the State of Washington.

CP 154.

There are certain elements that are not in dispute: the date of the crime, the location, and the fact that Mark Wallace was not a participant in the crime. The first issue is whether the defendant committed: (a) first degree burglary; and/or (b) attempted first degree robbery. The second issue is whether the defendant or an accomplice caused the death of Mark Wallace in the course of or in furtherance of such crime or in immediate flight from first degree burglary or attempted first degree robbery. Here, there is sufficient evidence that Corbin committed first degree burglary and that he or an accomplice caused the death of Mark Wallace in the course of that crime.[3]

1. There is sufficient evidence that Corbin committed first degree burglary.

The elements of first degree burglary are set forth in jury instruction number 24:

[3] There was sufficient evidence for the jury to find either burglary first degree or attempted first degree robbery. Because the jury found that Corbin committed first degree burglary, the State will analyze the sufficiency challenge under this prong.

> To convict the defendant of the crime of First Degree Burglary in Count 3, each of the following elements of the crime must be proved beyond a reasonable doubt: (1) That on or about October 24, 2010 the defendant or an accomplice entered or remained unlawfully in a building; (2) That the entering or remaining was with intent to commit a crime against a person or property therein; (3) That in so entering or while in the building or in immediate flight from the building the defendant or an accomplice was armed with a deadly weapon or assaulted a person; and (4) That any of these acts occurred in the State of Washington.

CP 162.

Here, there is sufficient evidence of all four elements. The location of the burglary and the date are not dispute. Nor is it disputed that three males unlawfully entered a building when they forced their way into Mark Wallace's home around11:00 p.m. The issue is whether Corbin or an accomplice unlawfully entered or remained in the home.

Corbin argues that "the only linkage between Mr. Corbin and the events of October 24, 2010 is the hat containing his DNA." (Appellant's Brief at 16). However, there is substantial evidence that Corbin unlawfully entered Wallace's home. This evidence includes the following:

1) the discarded murder weapon that 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.

Defendant's Hat

To begin with, there was the uncontroverted physical evidence, DNA evidence, connecting Corbin to the murder weapon, a pistol that was fired on October 24, 2010. The pistol was sitting in a hat that had Corbin's DNA on it. RP 623, 699. That hat, which was on top of a hooded jacket, was found the morning after the murder in a dumpster at a community center that was directly across the street from Corbin's grandparent's house and one mile from Corbin's house, RP 623, 625, 630, 751, 798.

The odds of another person having the same DNA is one in 12 trillion. This undeniable statistic means that the chance of another person having the same DNA profile is tremendously small. If investigators properly collect and handle biological evidence and forensic scientists conduct the analysis correctly, as was done here, DNA evidence is extremely accurate. There is a reason courts often rely on DNA evidence over other means of identification such as eyewitness testimony. DNA evidence has one of the highest levels of accuracy in criminal

identifications. Based on the undeniable DNA evidence, it was reasonable for the jury to conclude that the hat found was Corbin's hat.

Defendant's Hoodie/Jacket

It was also reasonable for the jury to conclude that the hoodie or jacket underneath the hat belonged to Corbin. In addition to the hoodie being found with Corbin's hat, Officer McLean testified that he recognized the black and white hoodie as one that Corbin wears. RP 647. He even took a photograph of Corbin wearing the hoodie on September 14, 2010, a mere 40 days before the murder. RP 645, CP 197. At trial, Brandon Wallace described the shooter as wearing a mostly black hoodie with some kind of designs on the sleeve. RP 460, 476. He could not say if it was a checkered design. RP 472. His description was consistent with the hoodie or jacket found with the murder weapon.

And, why was the hoodie thrown away? It was not used to conceal the gun in the garbage because the gun was lying right on top. RP 623, 625. The only reason to get rid of the hat, hoodie, and bandana would be because they were worn at the time of the crime and they might link a suspect to the murder. The reasonable inference is that Corbin wore these items, and not an accomplice, since the hoodie was positively identified as belonging to Corbin and it was with the hat with his DNA, RP 646-7. In

addition, Corbin admitted to having an identical jacket and said it was possibly he wore the jacket that was found at the community center. RP 762-3. Furthermore, Corbin's grandparents' house is right across the street from where the evidence was discovered. RP 751.

Corbin argues that "it was never established, beyond a reasonable doubt, that the hoodie was in fact Mr. Corbin's." (Appellant's brief at 16-7). The State only has to establish the elements beyond a reasonable doubt, and whether the hoodie belonged to Corbin was not an element. Nonetheless, there was substantial evidence for a jury to believe that the hoodie was Corbin's.

Defendant's Black Bandana

This same evidence (that hat and hoodie) connect Corbin to the black bandana found inside of the hoodie. A forensic scientist also found that Corbin was a possible contributor to DNA found on the bandana. RP 700. It is significant that a black bandana was found in his hoodie because the shooter had a black bandana over his face. RP 460. The logical reason why Corbin's hat and hoodie are both with the murder weapon and bandana the morning after the murder is that Corbin was in possession of all four items during the murder of Mark Wallace. He then subsequently disposed of any and all evidence tying him to the murder and left town.

Evidence of Flight

Evidence of flight is circumstantial evidence of guilty knowledge. See State v. Sanders, 66 Wash. App. 878, 885, 833 P.2d 452 (1992), review denied, 120 Wash. 2d 1027, 847 P.2d 480 (1993) (citing State v. Etheridge, 74 Wn.2d 102, 113, 443 P.2d 536 (1968); State v. Cobb, 22 Wn. App. 221, 224, 589 P.2d 297 (1978), review denied, 92 Wn.2d 1011 (1979)). Corbin's own witness, his cousin, Eric Graham, testified that Corbin left on the morning of the 25th and never came back. RP 889. Eric testified that he woke up around 8 or 9 a.m. and that Corbin left shortly after that. RP 885.

On December 15, 2010, Detective Deloza asked Corbin his current address and Corbin replied, "Um, right now I don't have one. I was on the run and..." RP 755, SE 258. When asked for a phone number, he admitted, "I don't have one of those right now neither." RP 755, SE 258. At another point, Corbin said he was already "on the run" before his face was on a billboard. RP 757, SE 258. Corbin told Detective Deloza that he was in Seattle. 780, SE 258.

Corbin's decision to leave town immediately after the murder is circumstantial evidence which might reasonably be considered to be the act of one who is conscious of his guilt. See State v. Jefferson, 11 Wn. App. 566, 570, 524 P.2d 248 (1974). This may be considered by the jury

in determining guilt or innocence. Etheridge, 74 Wn.2d 102. Here, it is significant that Corbin left town very quickly after the murder. It was also around the same time that the hat, hoodie, and murder weapon were found. The janitor found the items between 8:30 and 9 a.m. on October 25.

Defendant's Recorded Statement

Detective Deloza took a recorded statement from Corbin in which Corbin made many incriminating and inconsistent statements. First of all, Corbin tried to distance himself from the discarded hoodie or jacket. He said that the last time he saw the jacket was when he was living in Shoreline at a friend's house and that he had not seen it after that house got robbed. RP 763, SE 258. He said, "I haven't had that jacket for quite some time" and that any one of his friends could have worn his jacket. RP 764, SE 258. He indicated that it was quite possible that any of his friends could have it. RP 771, SE 258. He said that the last time he saw the jacket was a year and half to two years prior. SE 258. At another point he said, "I haven't had that jacket for quite some time…" and "I haven't seen that jacket in a long time…." RP 765, 786, SE 258. Yet it was uncontroverted that a photo of him in the jacket was taken about a month before the murder. RP 647, SE 197. When confronted with the probation officer's photo of him in the jacket, SE 197, he then changed his story and said that he last saw it around the same time the photo was taken. RP 777,

SE 258. Later, he said "...anybody's clothes can get misplaced." RP 768, SE 258.

Corbin's first story was that he last saw the jacket when he was living in Shoreline and that when his house got robbed, he never saw it again. RP 763, SE 258. His explanation is unreasonable. What are the odds that his jacket got stolen in Shoreline, Washington and then ended up across the street from his grandparent's house in Yakima, Washington underneath a hat containing his DNA and the murder weapon[4]? The reasonable inference is that he was trying to distance himself from the jacket.

Second of all, Corbin made a statement about "mask or gloves" when no information had been given to him about a mask or gloves being used during the commission of the murder. RP 796, SE 258. The fact that no information had been given to him is confirmed by the detective, RP 796, and by a review of the recorded interview, SE 258. The reasonable inference is that Corbin has firsthand knowledge that masks and gloves were worn by the perpetrators. This also logically explains why he was overly confident that his DNA would not be found on the murder weapon.

[4] At trial, the defense conceded that the gun was the murder weapon. RP 956.

Third, Corbin tried to claim he had an alibi and that there was no reason to be outside of his house. RP 759, SE 258. When asked about the 25th, he said he was at Lydia's the whole entire day and that "nobody can place me anywhere else." RP 783, SE 258. Yet, one of his relatives, Roger Williams, testified that he saw Corbin on October 25, the morning after the murder, sitting on some stairs along Fair and Arlington between 9 and 10 am in the morning. RP 836-7. When confronted with Williams seeing him, Corbin admitted that he would leave the house to buy beer or weed. RP 784, SE 258. He then said that he remembered being at the house "most of the day." RP 785, SE 258. At trial, Eric Graham testified that Corbin left in the morning and never came back. RP 885, 889. So instead of being honest about where he was on the 25th, it is clear that he so badly wanted to have an all-day alibi that he told the officers that, despite overwhelming evidence to the contrary.

Fourth, when asked what he knew about the case, he talked about a friend who would not hang out with him because she heard that he shot somebody and was a murderer. RP 757, SE 258. He said he called around and heard similar rumors. RP 757. It is important to note that when he describes what he heard, he places himself in the position of the shooter, not someone that simply entered the home. Later on in the interview, he said he heard that the suspects were black and that "...everybody's saying

that I, apparently, I was with those people or something, I don't know." RP 770, SE 258. So even within his statement, he gave conflicting answers to the detective. There is a difference between a rumor that you shot someone and a rumor that you were with the suspects "or something." A reasonable inference is that he is trying to minimize his involvement when he says he does not know what the rumor is.

Fifth, Corbin's alibi defense was weakened when asked what time he arrived on October 24th. Corbin admitted that he was "...in and out from there all the time..." RP 760, SE 258. He said that he was there all day and all night, but when asked if he ever left the residence, he said "...nowhere but to like the store..." RP 761, SE 258. Furthermore, this crime occurred at about 11:00 p.m. RP 456, 515. Corbin's witness, Eric Graham, claimed he usually goes to bed at 11:00 pm. RP 884-5. Eric never testified to the exact time he went to bed on October 24. He testified that based on his habits, he would say approximately "around 11:00." RP 884-5. It is possible that Eric went to sleep before 11:00 and Corbin then left to go to the victim's home without Eric even noticing that Corbin had left. Given the time frame, Graham did not provide Corbin with an alibi defense. And, as will be explained next, the jail phone calls indicate that Eric was more likely an actual participant in the crime.

Finally, Corbin admitted that if he did do the murder, he wouldn't tell the detective. Specifically he said, "But if I did do it, I wouldn't tell you." RP 781, SE 258. This statement is significant and sheds light on how credible Corbin was throughout the interview.

Defendant's Jail Phone Calls

Not only is the entire recorded interview incriminating, Corbin also made incriminating statements over the jail phones implicating him as the shooter. Corbin told the detective he had not been in possession of any guns, RP 763, SE 258, contrary to statements he made from jail on other inmate's PIN numbers. In those calls, he admitted that he carries a "bang," which is slang for a firearm. RP 854, SE 283. And he said that he sometimes keeps two. RP 857-8, SE 283. The only reason to deny this in the recorded statement given to Detective Deloza is to hide the fact that his gun was found on October 24, along with his hat and hooded jacket.

On June 5, 2011, Corbin made a phone call on another inmate's PIN:

> And I understand that nigger, that's why I've been the front-liner in this, the sacrificial person this whole time, nigger, like I got you nigger, don't worry about it nigger, shut the fuck up and go home nigger, I got this, matter of, watch out nigger, watch out nigger, give

> me the pistol, back up nigger, this ain't for you nigger, I'm that guy nigger.

RP 858-9, SE 283. The reasonable inference from these statements is that he was the shooter. The testimony at trial was that the shooter had a pistol and that the other two guys had a rifle or shotgun. RP 457-8, 463. The testimony was that the guy with the pistol was in front, RP 457, 461, 519, consistent with Corbin's description of himself as a "front-liner." Corbin also described himself as the "sacrificial person." RP 858-9, SE 283. None of his other accomplices were arrested or charged. RP 860. This is consistent with Corbin being the "sacrificial person."

It is significant that he is not making the jail phone calls under his PIN number, where his statements would be more readily connected to him. The logical reason he is using another's PIN number is so he talk more openly and freely, in hopes that the statements will never be attributed to him.

A few months later, he made the following phone call, again using another inmate's PIN number:

> They fear me in the streets because I'm here with a pistol, and I ain't never been afraid of no contract killer, been hitting licks, you better ask about cuz, I jack you and I sell it right back to your bloods.

RP 860, SE 283. Again, he mentioned a pistol, the same type of weapon that the shooter used. Id. In the same sentence, he also said he has been "hitting licks," which means committing robberies.[5] Id. The State's theory of this case was that the burglary was done with the intent to steal drugs or drug proceeds. Corbin's cousin, Eric, testified that they were all using marijuana on the evening of October 24. RP 888. So if Corbin was a marijuana user, and the victim sold marijuana, it was a reasonable inference that Corbin's intent was to rob the victim of his marijuana or any drug dealing proceeds he may have kept in his home.

During his interview, Corbin said on the 24th he was watching movies with three others, including Eric. RP 758-60, SE 258. In jail phone calls, Corbin told Zealand Adams that he does not need more continuances. SE 283. He said, "for what, to sit in, for what they have everything that they are ever going to have, there's no witness point me out, so they have everything that they are ever going to have, the only way that…" RP 859, SE 283. Adams replied, "how you know that Eric, or JC, or Little T ain't point you out?" RP 859 SE 283.

[5] In Corbin's recorded statement he told the detective that "hit a lick" refers to a robbery. The audio CD, SE 283, and State's Identification 257 are the most complete and accurate records of what Corbin said. The term "hit a lick" comes from the phrase "hitting a liquor store," but now refers to any robbery.

Corbin got upset when Adams asked him how he doesn't know that one of those three guys hadn't already pointed him out. Corbin replied, "I don't understand that right there, right there, what you just did, I don't at all, please don't ever do that again." RP 860, SE 283. Corbin is clearly upset with Adams at this point in the phone call. Corbin does not want Adams naming the other suspects who could point him out to police. Note that Corbin's reply is not along the lines of "no one will point me out because I didn't do anything" or "no one will point me out because I'm innocent." Corbin's response indicates that Adam has correctly pointed out that there are witnesses who could implicate Corbin in the crime.

Adams went on to tell Corbin that the people aren't just witnesses, they are suspects. RP 860, SE 283. He told Corbin, "...they have those people as mother fucking suspects as well…" and that "they already took the niggers in for questioning do you feel me?" RP 860, SE 283. Corbin replied, "Well I'm still the only one here so obviously the questioning didn't go too far." RP 860, SE 283. Corbin did not dispute Adam's statement that Eric, J.C. and Little T were suspects. The reasonable inference here is that Eric, J.C., and Little T are Corbin's accomplices and that they would have been arrested on their own charges if they had talked to the police. In other words, if someone had talked, they would have been arrested and in jail along with Corbin.

Another reasonable conclusion from this phone call is that Eric Graham is the Eric they are talking about, and that Eric was one of three witnesses who could point out Corbin as being involved in the murder. So Corbin's alibi theory was rebutted by the jail phone calls admitted in this case. Eric was not an alibi witness. He was, at the least, someone who had the ability to point Corbin out to law enforcement.

This jail phone call also contradicts Corbin's recorded statement where Detective Deloza directly asked him, "...is...anybody else gonna come forth and point the finger at you?" RP 780-1, SE 258. In the interview, Corbin sidestepped the question. He replied by asking Detective Deloza, "how many people were involved?" RP 781, SE 258. Corbin was again later asked, "Is there somebody out there that would come up and point the finger at you?" RP 783, SE 258. Corbin replied that would only happen if someone was trying to get the attention off of them. RP 783, SE 258. Corbin never told the detective that Eric, JC, or Little T might point the finger at him. SE 258.

In another call, Adams asked Corbin if "Niggers is um cooperating?" RP 858, SE 283. Corbin replied:

> "Not that I know of. If somebody—see, that's the thing though, remember, just like I told you when we were being (inaudible),

> there's a thing about that, you know what I'm saying? If you do then that's like fucked up for the whole bunch. You spoil the whole bunch, see what I'm saying?"

RP 858, SE 283. He added, "So, if they would of, they definitely wouldn't have taken this long to file charges. That's what they was waiting for—somebody to do that. As of now they got my DNA." RP 858, SE 283. This phone call shows that Corbin knew if someone cooperated with law enforcement, charges would have been filed against him sooner. The reasonable inference is that witnesses or accomplices had incriminating evidence against him and he knew that. He mentioned that someone cooperating would be "fucked up for the whole bunch." It is important to note that he did not say that witnesses coming forward would help him prove his innocence or help exonerate him. And he did not talk about witnesses messing things up for just him. His concern was them messing up things for the "whole bunch." He would only be concerned about cooperating witnesses messing up the "whole bunch" if he was part of that group.

In sum, when you put all of this evidence together, the result is more than enough evidence to prove each of the following elements of first degree burglary beyond a reasonable doubt:

> (1) That on or about October 24, 2010 the defendant or an accomplice entered or remained unlawfully in a building; (2) That the entering or remaining was with intent to commit a crime against a person or property therein; (3) That in so entering or while in the building or in immediate flight from the building the defendant or an accomplice was armed with a deadly weapon or assaulted a person; and (4) That any of these acts occurred in the State of Washington.

CP 162.

Corbin left town the morning after the burglary. Around the same time, his hat and hoodie are found in a dumpster across the street from his grandparents' home. The hat has his DNA on it and the odds of another person having the same DNA is 1 in 12 trillion. Inside his hoodie is a black bandana matching the description given by the victims. On top of his hat is the gun used in the burglary the night before.

He is then interviewed 45 days later. He goes to great lengths to distance himself from the hoodie, claiming he hasn't seen it for years. But, unknown to him, the detective has a photo of him wearing the hoodie only 40 days before the murder. Corbin then scrambles for an explanation as to how the hoodie he wears is with the murder weapon. He admits that he had the hoodie when the officer took the photo. He claims that it was stolen in Shoreline, Washington and he never saw it after that point. He also talks about misplacing clothes and at another time, his friends

wearing his clothes. Because Corbin had not planned on his hoodie being identified as his, he had no explanation. In the end, his statements only showed his guilty knowledge and the fact that he was trying to desperately distance himself from that hoodie.

But the evidence doesn't end there. You also have all his inconsistent statements about his alibi. He claims to have been with three other adults all day and all night on the 24th and 25th. But, when told someone saw him the next morning on the 25th, his all day and all night alibi changes. He then admits he is in and out from the house and goes to the store. At trial, he calls his cousin as an alibi witness but Eric can only guess what time he went to bed on October 24 based on his habits. He guesses 11:00, the same time as the burglary. So, at the end of the day, Corbin had no alibi.

And you have all his incriminating jail phone calls, where he talks about other suspects cooperating and the fact that had someone talked, the other suspects would be in jail with him too. He knows the other suspects by name, even though he didn't tell the detective their names. And he mentions that if someone had talked, the State wouldn't have waited so long to file charges. His jail phone calls were made on other inmates PIN numbers, likely so he could talk more freely about his case. However, the phone calls were discovered and are strong evidence of his guilt. When

you put all of this evidence together, any reasonable trier of fact could have found that Corbin unlawfully entered Wallace's home.

As for the second element of burglary, intent, Corbin may be inferred to have acted with intent to commit a crime against a person or property therein. See RCW 9A.52.040. The only intent that these armed, concealed men could have had was a criminal intent, namely, to commit theft. As for the final element of burglary, there is sufficient evidence that while in the victim's home, Corbin or an accomplice was armed with a deadly weapon. They were all armed. The shooter had a pistol and the other two had rifles or shotguns. RP 457-8, 463. And, as discussed below, there was evidence that Brandon Wallace was assaulted by Corbin or an accomplice. Based on the totality of this evidence, when viewed in the light most favorable to the State, a reasonable juror could have found that Corbin committed first degree burglary.

Corbin's entire argument is based on an accomplice theory of the case. He does not argue that there was insufficient evidence based upon the theory that Corbin was the principal. Corbin argues that the State did not prove how Corbin acquired knowledge of the events occurring on October 24, 2010. That is not an element of first degree murder. The State did not have to prove that. Corbin next argues that the State did not present any evidence of an "agreement." Again, the State does not have to

prove any agreement. Corbin argues that the State had to prove an agreement because the "jury believed that Mr. Corbin was not one of the individuals who entered the residence." (Appellant's brief at 14). Again, the proof required for first degree murder does not change based on a jury question. Corbin provides no support for his argument that the State must prove "some type of agreement" based solely on the existence of a jury question in the middle of jury deliberations. The reason is that the State does not have to prove any agreement existed. As explained above, for a sufficiency challenge, the Court can look at whether there is sufficient evidence to support either a principal or accomplice theory.

Corbin argues that the three individuals who entered the Wallace home were not "specifically identified." They do not have to be "specifically identified." Corbin cites no authority for his argument and does not define what is meant by "specifically identified." When it comes to identity, as indicated in State v. Whalon:

> Any evidence which tends to identify the accused as the guilty person is relevant. Any competent evidence which tends logically to prove a defendant's connection with a crime is material. Materiality is judged not only upon what the evidence shows standing alone, but also on whatever inferences may be drawn when it is viewed in connection with other evidence.

1 Wn. App. 785, 791, 464 P.2d 730 (1970) (citations omitted). The elements of any crime, including identity, may be proven by circumstantial evidence, and it is not to be considered any less reliable than direct evidence. See Garcia, 20 Wn. App. 401, w. Delmarter, 94 Wn.2d at 638. As explained in State v. Johnson:

> Identity involves a question of fact for the jury and any relevant fact, either direct or circumstantial, which would convince or tend to convince a person of ordinary judgment, in carrying on his everyday affairs, of the identity of a person should be received and evaluated. The evaluation of this evidence is for the trier of the fact and evidence of identity should not be weighed again on appeal to determine if the state has proven beyond a reasonable doubt that the defendant was the person who committed the offense.

12 Wn. App. 40, 44, 527 P.2d 1324 (1974) (citations omitted).

Here, the State proved identity by competent evidence, sometimes direct, and sometimes circumstantial. Standing alone, some pieces would not have been enough to convict. But the jury can draw inferences from one piece of evidence based on its connection to other evidence. The totality of the evidence is significant. The jury considered everything: his hat, hoodie, and black bandana found with the murder weapon in a dumpster across the street from his grandparents' house, his conflicting

and damaging statements to the detective and on the jail phone, and his leaving town the morning after the murder. What weight to give that evidence was left to the jury who ultimately found Corbin guilty of first degree burglary beyond a reasonable doubt.

2. There is sufficient evidence that Corbin or an accomplice caused the death of Mark Wallace in the course of first degree burglary.

The second element of first degree murder is "that the defendant or an accomplice caused the death of Mark Wallace in the course of or in furtherance of such crime or in immediate flight from such crime." CP 154. Having shown that there was sufficient evidence to convict Corbin of burglary in the first degree, it logically follows from the facts that this other element is proven as well. Mark Wallace was coming to the aid of his son, Brandon, who called for him after being told to "get on the ground" and getting hit with a pistol. RP 747. When Wallace came out his bedroom, he was shot in the chest and died as a result of the shot. RP 463. The three armed men then ran off. RP 463. This is sufficient evidence to prove that Corbin or an accomplice caused the death of Mark Wallace in the course of first degree burglary.

C. THERE IS SUFFICIENT EVIDENCE THAT CORBIN OR AN ACCOMPLICE COMMITTTED SECOND DEGREE ASSAULT.

Having shown that there was sufficient evidence to convict Corbin of first degree murder and first degree burglary, it logically follows from the facts that the elements of second degree assault were proven. Those elements are set forth in jury instruction number 20:

> To convict the defendant of the crime of Second Degree Assault in Count 2, each of the following elements of the crime must be proved beyond a reasonable doubt; (1) That on or about October 24, 2010, the defendant or an accomplice assaulted Brandon Wallace Jr. with a deadly weapon; and (2) That the acts occurred in the State of Washington.

CP 29. Here, there is no dispute that the deadly weapon was a pistol, or that Wallace was assaulted. Brandon Wallace testified that he was pistol-whipped. RP 460. He had a visible bump on his forehead. RP 747. As discussed in the previous section, it was reasonable for the jury to find that Corbin committed first degree murder and first degree burglary. It was uncontroverted that the shooter was the same person who pistol-whipped Brandon. RP 747, 463. Considering the evidence in the light most favorable to the State, a rational jury could have found all of these essential elements of second degree assault.

IV. CONCLUSION

In sum, there was sufficient evidence to support all of the elements of first degree felony murder, first degree burglary, and second degree assault. Corbin's convictions should be affirmed.

Respectfully submitted this 30th day of January, 2015,

TAMARA A. HANLON WSBA 28345
Deputy Prosecuting Attorney

DECLARATION OF SERVICE

I, Tamara A. Hanlon, state that on January 30, 2015, by agreement of the parties, I emailed a copy of BRIEF OF RESPONDENT to Mr. Dennis Morgan at nodblspk@cabletv.com.

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

DATED this 30th day of January, 2015 at Yakima, Washington.

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