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63891.2

NO. 63891-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

FALINE MARSETTE,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HOLLIS R. HILL

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**BRIEF OF RESPONDENT**

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A. ISSUES

Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. In this case, the evidence establishes that after the victim kicked the defendant out of a party, the defendant and her cousin jumped on the hood of the victim's SUV and hit it with bricks, causing over \$1500 in damages. Is there sufficient evidence to convict the defendant for First Degree Malicious Mischief?

B. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

The State charged defendant Faline Marsette by amended information with First Degree Malicious Mischief. CP 9. It was alleged that, together with another, she intentionally caused over \$1500 in damage to Mardee Marquard's vehicle. CP 9. A jury trial found Marsette guilty as charged. 1RP<sup>1</sup> 2; CP 58. The Honorable

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<sup>1</sup> The Verbatim Report of Proceedings will be referred to as follows: 1RP (Pretrial 06/02/09); 2RP (Trial 06/02/09); 3RP (Trial 06/04/09); 4RP (Trial 06/08/09); 5RP (Sentencing 06/22/09).

Hollis Hill sentenced Marsette to a standard range sentence. 5RP 10-11; CP 59-66. Marsette now appeals her conviction. CP 67.

## 2. TRIAL FACTS

Mardee Marquard and Derek Mayer had been dating for several years when they separated in January, 2008. 2RP 5-6. During that short separation, they saw other people, and Mayer dated the defendant, Faline Marsette. 2RP 7. After a month or two apart, Marquard and Mayer reconciled and resumed their relationship. 2RP 7-9.

On June 28, 2008, Marquard and Mayer went to a friend's wedding. 2RP 9-10. Afterwards, they joined members of the wedding party at a local bar. 2RP 11-12. There, Marquard and Marsette saw each other for the first time in a while. 2RP 15-16. There was tension between the women. 2RP 15-16.

Marquard and Mayer left the bar to go to an after-party at a friend's house. 2RP 17-18. Marquard drove her newly-detailed black SUV; on the windshield was her photo-identification work badge. 2RP 32, 38, 46.

Harold Price and Matthew Jones were also at the after-party, near the front door. 2RP 90, 3RP 6-7. Price and Jones both knew

Marsette and saw her arrive sometime later with her cousin. 2RP 18-19, 90-91, 99; 3RP 7. Eventually, Marquard saw Marsette, and they made eye contact. 2RP 25-26, 29. Upset, Marquard told her friends that she wanted to leave. 2RP 26-27. Marquard's friends instead kicked Marsette out of the house. 2RP 27-28, 124.

About 20 minutes after Marsette left, Price looked outside and saw Marsette with bricks in her hand smashing the windshield of Marquard's SUV. 3RP 11. Price yelled into the party that someone's black car was being "busted up." 2RP 32-34, 94. Jones looked outside and saw Marsette and Marsette's cousin jumping on the SUV's hood. 2RP 95. The cousin jumped off the hood and threw a brick into the driver's side window. 2RP 95-96. Marsette lost her footing while jumping and fell onto the hood of the SUV. 2RP 96-97. Jones then saw Marsette get in her red Chevy and drive away with her cousin. 2RP 96-97.

Marquard ran outside in time to see Marsette's car driving away from her damaged SUV. 2RP 33-34, 68. A landscaping brick lay next to the SUV. 2RP 39, 43-44. Its windshield was broken, the hood gashed, the front fender scratched, and the driver's door and window were broken. 2RP 34, 40. Marquard called police. 2RP 39, 43-44. Price and Jones both later identified Marsette from

photo montages as the person who damaged the car. 2RP 75-79,  
104. The total damage to Marquard's SUV was over \$3000.  
2RP 129.

C. ARGUMENT

1. SUFFICIENT EVIDENCE SUPPORTS MARSETTE'S  
MALICIOUS MISCHIEF CONVICTION.

Marsette's sole claim on appeal is that there is not sufficient evidence in the record to sustain her First Degree Malicious Mischief conviction because the State did not prove beyond a reasonable doubt that she committed the crime. Her claim is meritless.

Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that reasonably can be drawn therefrom." Id. Circumstantial and direct evidence are

equally reliable. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. Id. at 719. The appellate court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. Id. at 718.

A person commits First Degree Malicious Mischief if she knowingly and maliciously causes physical damage to the property of another in an amount exceeding \$1,500. RCW 9A.48.070(1)(a). "Malice" is defined as "an evil intent, wish, or design to vex, annoy, or injure another person." RCW 9A.04.110(12). Malice may be inferred "from an act done in willful disregard of the rights of another. . ." Id. Specific criminal intent of the accused can be inferred from conduct that plainly indicates such intent as a matter of logical probability. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

To establish accomplice liability,<sup>2</sup> the State has to prove more than the defendant's physical presence at the scene. In the Matter of the Welfare of Wilson, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979). However, a defendant is an accomplice to the offense if in some way she associates herself with the undertaking, participates in the crime with a desire to bring it about, and seeks by her action to make it succeed. State v. J-R Distribs., Inc., 82 Wn.2d 584, 593, 512 P.2d 1049 (1973). Thus, if the defendant is ready to assist in the offense, she shares criminal responsibility and is an accomplice to the crime. State v. Luna, 71 Wn. App. 755, 759, 862 P.2d 620 (1993).

Both Marsette and her cousin assisted each other in committing this offense. Since the evidence establishes that both Marsette and her cousin jumped on the SUV and hit it with a brick,

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<sup>2</sup> RCW 9A.08.020 provides in part that:

- (3) A person is an accomplice of another person in the commission of a crime if:
  - (a) With knowledge that it will promote or facilitate the commission of the crime, he
    - (i) solicits, commands, encourages, or requests such other person to commit it; or
    - (ii) aids or agrees to aid such other person in planning or committing it.

RCW 9A.08.020.

their criminal actions encouraged each other.<sup>3</sup> 2RP 95-97; 3RP 11.

Thus, as a full participant in the crime, Marsette assumes the criminal responsibility of her cousin as an accomplice to the malicious mischief.

The resulting damage was over \$3000, which was shown by repair estimates. 2RP 129. Thus, the evidence establishes that the defendant satisfied the elements of the crime of First Degree Malicious Mischief. See RCW 9A.48.070(1)(a).

Marsette argues that the conflicting witness testimony means there is insufficient evidence to show that Marsette intentionally damaged the SUV. Marsette bases her claim on the fact that witnesses, except for Jones, were drinking that night and that this "intoxication and these inconsistencies" make some testimony more reliable than others. Appellant's Brief at 8. However, any issues of testimonial conflict or credibility are resolved by the jury. See State v. Fiser, 99 Wn. App. at 719. Thus,

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<sup>3</sup> Price saw Marsette on the hood of the SUV smashing the windshield with a brick. 3RP 11. Jones then came outside and saw the cousin on the hood with Marsette, as Marsette was jumping on the hood. 2RP 95. Jones then saw the cousin use a brick to break the driver's side door and window. 2RP 95-96. Jones then saw Marsette inadvertently slip off the hood doing more damage to the front fender. 2RP 96-97. Jones then saw Marsette drive her cousin from the scene. 2RP 96-97.

the issues now raised by Marsette were resolved by the jury through the totality of the evidence.

Marsette's malice toward Marquard could not be more palpable. The conflict between the two began when Mayer broke up with Marsette and resumed his relationship with Marquard. 2RP 7-9. This tension renewed five months later at the bar and continued at the after-party. 2RP 15, 25-29. When Marquard's friends kicked Marsette out of the house, Marsette's anger climaxed. This frustration was released on Marquard's SUV, which clearly belonged to Marquard due to her photo work badge in the windshield. 2RP 38; 3RP 11. Price saw Marsette initiate the attack by smashing this windshield with a brick. 3RP 11. Jones then saw her jumping on the hood of the SUV while her cousin took a brick to the side of the car. 2RP 95-97. Thus, the testimony from the witnesses independently would allow for the jury to infer that Marsette had participated in the crime. See supra n. 3.

Marsette is attempting to retry the case on appeal. Because the credibility of witnesses is left for the jury and is viewed in a light most favorable to the State, her claim fails.

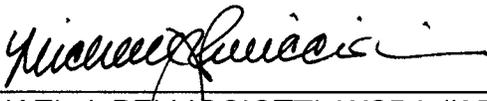
D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Marsette's conviction.

DATED this 2<sup>nd</sup> day of April, 2010.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Vanessa Lee, the attorney for the appellant, at 1511 Third Avenue, Suite 701, Seattle, WA 98101, containing a copy of the Notice of Appearance, in STATE V. FALINE MARSETTE, Cause No. 63891-2, in the Court of Appeals, Division I, for the State of Washington.

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

U Brame  
Name  
Done in Seattle, Washington

4/5/10  
Date