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 COURT OF APPEALS DIV I  
 STATE OF WASHINGTON  
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No. 67958-9-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM SCOTT GOBAT,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE  
 STATE OF WASHINGTON FOR SNOHOMISH COUNTY

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

William Gobat participated with two other men in an assault on a fourth man, who later died of his injuries. Mr. Gobat was convicted of second degree murder, but the State did not prove beyond a reasonable doubt either that he killed the man or that he acted with knowledge he was facilitating a murder. Therefore, the State failed to prove the elements of the crime.

B. ASSIGNMENT OF ERROR

The State did not prove beyond a reasonable doubt Mr. Gobat killed the victim or acted with knowledge he was facilitating a murder.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

To prove a person is guilty as an accomplice to murder, the State must prove beyond a reasonable doubt that the person killed the victim or acted with knowledge he was facilitating a murder. Did the State fail to prove Mr. Gobat was an accomplice to murder where the State did not prove beyond a reasonable doubt that he killed the victim or acted with knowledge he was facilitating a murder?

D. STATEMENT OF THE CASE

William Gobat is a friend of Emily Clausen's. RP 454. Ms. Clausen sold crack cocaine and other drugs. RP 335-36. One day,

when Mr. Gobat was visiting Ms. Clausen at her home in Everett, she asked him to do her a favor by delivering some drugs to a customer named Donald Barker. RP 456-57. Mr. Gobat did not know Mr. Barker. RP 455. As requested, Mr. Gobat met Mr. Barker nearby and gave him \$30 worth of crack cocaine. RP 458-59. In return, Mr. Barker gave him an apparent roll of cash. RP 459-60. When Mr. Gobat brought the roll of cash to Ms. Clausen, she opened it and saw that it was only a \$1 bill wrapped around a receipt. RP 459-60. Ms. Clausen was angry. RP 459-60.

About two weeks later, on December 27, 2010, Mr. Gobat was again visiting Ms. Clausen at her home. RP 461. Also present were their friends Patrick Griffiths, Antonio Ruiz, and Cara Jean Ford. RP 263, 465. At one point in the early evening, Ms. Clausen told the group that a man had called her asking to buy \$30 worth of drugs and she needed someone to go and pick up the money for her.<sup>1</sup> RP 464. Mr.

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<sup>1</sup> Mr. Gobat testified Ms. Clausen made this request to the group in general at the house, and not to anyone specifically. RP 464. In contrast, Mr. Griffiths testified Ms. Clausen made the request to either Mr. Ruiz or Mr. Gobat—he could not recall which one—via either cell phone call or text message sent while the three men were in Mr. Griffiths’ car running an errand. RP 271-72. Mr. Gobat testified he did not receive such a call and did not have his cell phone with him in the car. RP 482.

Gobat, Mr. Ruiz and Mr. Griffiths agreed to go. RP 465. Mr. Gobat did not know who they were going to meet. RP 467.

Mr. Griffiths drove the three men to an elementary school nearby and parked in the parking lot. RP 275, 466. They did not discuss at any point what would happen when they encountered the man they were going to meet; they did not have a plan. RP 277-78, 484. As the men got out of the car, they saw another man—who turned out to be Mr. Barker—standing some distance away, waving at them. RP 276, 466. Mr. Gobat testified he did not recognize Mr. Barker at first. RP 467. Mr. Gobat approached Mr. Barker and asked if he knew him. RP 467. Mr. Barker became angry, looked at Mr. Gobat funny, and then hit him on the side of the face. RP 467-68. Mr. Gobat hit him back, lost his balance, and fell to the ground. RP 468-69. As he picked himself up, Mr. Barker ran toward his car. RP 469.

Mr. Gobat testified Mr. Griffiths chased Mr. Barker, caught him and tackled him to the ground. RP 470. The two men hit each other. RP 470. Mr. Gobat grabbed Mr. Griffiths and pulled him off Mr. Barker. RP 471. Mr. Gobat did not know where Mr. Ruiz was at that point. RP 471. Mr. Gobat and Mr. Griffiths then walked to the car and

got in. RP 472-73. Mr. Ruiz followed soon thereafter and the men drove away. Id.

According to Mr. Griffiths, Mr. Gobat started the fight by walking up to Mr. Barker and punching him in the face one time. RP 277-78. Then Mr. Ruiz and Mr. Griffiths joined in. RP 277-78. Mr. Griffiths did not see Mr. Gobat land any further blows. RP 279, 328.

Mr. Griffiths said that when he caught up to Mr. Barker after Mr. Barker had broken free, Mr. Barker held his arms and pushed him to the ground. RP 281-82. Almost immediately, Mr. Gobat and Mr. Ruiz ran up and pulled Mr. Barker off of Mr. Griffiths. RP 281-82. After that, Mr. Griffiths did not see any specific punches thrown but did see Mr. Barker end up on all fours on the ground. RP 283-84. Mr. Griffiths did not see Mr. Gobat hit Mr. Barker again but did hear him say something like, “where’s the money.” RP 284. At that point, Mr. Griffiths picked up Mr. Barker’s cell phone, which had dropped to the ground, and walked back to the car.<sup>2</sup> RP 283-85. Mr. Gobat and Mr. Ruiz joined him almost immediately. RP 286.

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<sup>2</sup> Mr. Griffiths ultimately pled guilty to first degree robbery and agreed to testify against Mr. Gobat in exchange for the State’s agreement to recommend a lenient sentence. RP 300.

The men returned to Ms. Clausen's house. RP 286. Mr. Griffiths told Ms. Ford, who was his girlfriend, that he had kneed Mr. Barker in the face. RP 364. Ms. Ford saw blood on Mr. Griffiths' pants and shoelaces. RP 345. While Ms. Ford was talking to Mr. Griffiths, Mr. Ruiz handed her a big knife in a black sheath and asked her to hide it. RP 342. She hid the knife between two boxes in the laundry room and later she and Ms. Clausen cleaned the knife in the shower. RP 349. Ms. Ford saw blood on the blade. RP 350. Ms. Clausen took the knife and disposed of it somewhere.<sup>3</sup> RP 351. Police never found the knife. RP 203.

Later that night Mr. Ruiz told Ms. Ford he had stabbed Mr. Barker.<sup>4</sup> RP 354-55. He showed her how, making stabbing motions. RP 354-55. Mr. Ruiz said he alone had stabbed Mr. Barker and neither Mr. Gobat nor Mr. Griffiths knew he had stabbed him. RP 368-69.

Mr. Barker died later that night from his injuries. RP 131.

Mr. Griffiths testified that he never saw a weapon and did not see anyone stab Mr. Barker. RP 285. He did not think the fight was serious until later that night when he learned on the news that Mr. Barker had died. RP 284, 287-88.

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<sup>3</sup> Ms. Clausen did not testify at trial.

<sup>4</sup> Mr. Ruiz did not testify at trial.

Mr. Gobat also testified that he never saw a knife or any other weapon. RP 474, 480. He never expected Mr. Barker to get hurt. RP 480. Like Mr. Griffiths, he did not know how badly Mr. Barker was hurt until later when he found out he had died. RP 486.

Mr. Gobat testified that he threw only one punch, at the beginning of the incident. RP 486. Mr. Griffiths agreed that he saw Mr. Gobat throw only one punch. RP 277-79, 283-84, 318-19, 328. No other eyewitness testified at trial.

Mr. Gobat was charged with one count of second degree felony murder based on the predicate crime of second degree assault. CP 65.

At trial, the medical examiner, Norman Thiersch, testified Mr. Barker suffered two stab wounds, one in his abdomen, which pierced his liver, and one in his right lower back. RP 414-18. Mr. Barker also had bleeding inside his head, caused by blunt force trauma to the head. RP 426, 433-34. Both the stab wound to the liver and the bleeding in the head could cause death quickly and Dr. Thiersch could not say which injury was the cause of death. RP 434.

The jury was instructed it could convict Mr. Gobat if it found that: (1) “the defendant or an accomplice committed Assault in the

Second Degree;”<sup>5</sup> (2) “the defendant or an accomplice caused the death of Donald Barker in the course of and in furtherance of such crime or in immediate flight from such crime;” and (3) “Donald Barker was not a participant in the crime of Assault in the Second Degree.”<sup>6</sup> CP 45.

The court also instructed the jury that:

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

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<sup>5</sup> The court instructed the jury that a person commits assault in the second degree when he “intentionally assaults another and thereby recklessly inflicts substantial bodily harm.” CP 46.

<sup>6</sup> The “to convict” instruction stated in full:

To convict the defendant of the crime of Second Degree Murder, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 27th day of December, 2010, the defendant or an accomplice committed Assault in the Second Degree;

(2) That the defendant or an accomplice caused the death of Donald Barker in the course of and in furtherance of such crime or in immediate flight from such crime;

(3) That Donald Barker was not a participant in the crime of Assault in the Second Degree; and

(4) That any of these acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP 45.

(2) aids or agrees to aid another person in planning or committing the crime.

CP 54.<sup>7</sup>

The jury found Mr. Gobat guilty of second degree felony murder as charged. CP 4, 32.

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<sup>7</sup> The accomplice liability instruction stated in full:

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

(1) solicits, commands, encourages, or requests another person to commit the crime; or

(2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

CP 54.

E. ARGUMENT

THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT MR. GOBAT ACTED AS A PRINCIPAL OR AN ACCOMPLICE TO MURDER

1. To convict a person of the crime of murder, the State must prove beyond a reasonable doubt either that the person killed the victim or that he acted with knowledge he was facilitating a murder.

It is a fundamental principle of constitutional due process that the State must prove every element of a charged offense beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 477, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. XIV; Const. art. I, § 3.

In reviewing the sufficiency of the evidence to uphold a conviction, the question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

Here, Mr. Gobat was charged with one count of second degree murder. CP 65; RCW 9A.32.050(1)(b).<sup>8</sup> The jury was instructed it could find him guilty of the crime if it found that either he *or* an accomplice caused the death of Mr. Barker. CP 45.

To prove a person was an accomplice to a crime, the State must prove beyond a reasonable doubt the person acted with knowledge that his actions “[would] promote or facilitate the commission of *the crime.*” RCW 9A.08.020(3) (emphasis added); CP 54 (jury instruction). “‘The crime’ means the charged offense.” State v. Roberts, 142 Wn.2d 471, 510, 14 P.3d 713 (2000). Thus, accomplice liability does not attach simply because the person knows he is aiding in the commission of *some* crime. State v. Cronin, 142 Wn.2d 568, 579, 14 P.3d 752 (2000). Instead, accomplice liability requires that the person act with “the purpose to promote or facilitate *the particular conduct that forms the basis for the charge*”; the person “*will not be liable for conduct that does not fall within this purpose.*” Roberts, 142 Wn.2d at 510-11 (citation and internal quotation marks omitted).

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<sup>8</sup> RCW 9A.32.050(1)(b) provides: “A person is guilty of murder in the second degree when . . . [h]e 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 . . . .”

Accomplice liability is not strict liability. Roberts, 142 Wn.2d at 511. “[T]he culpability of an accomplice [does] not extend beyond the crimes of which the accomplice actually has ‘knowledge.’” Id. Thus, an accomplice is not liable for any and all offenses ultimately committed by the principal. Cronin, 142 Wn.2d at 579.

An accomplice must have general knowledge of the crime charged but need not have specific knowledge of *every element* of the crime committed by the principal. Id. at 512. Thus, for example, to convict a person as an accomplice to first degree robbery, the State need not prove the defendant knew the principal was armed, as long the evidence shows the defendant knew he was facilitating a robbery. State v. Davis, 101 Wn.2d 654, 658-59, 682 P.2d 883 (1984). “The crime” for purposes of accomplice liability is the general charged crime, regardless of degree. In re Pers. Restraint of Sarausad, 109 Wn. App. 824, 835, 39 P.3d 308 (2001).

For the crime of murder, in order to convict a person as an accomplice, the State must prove beyond a reasonable doubt the individual had general knowledge he was aiding in the commission of a murder. Cronin, 142 Wn.2d 581-82. “[T]he law of accomplice liability in Washington requires the State to prove that an accused who is

charged as an accomplice with murder in the first degree, second degree or manslaughter knew generally that he was facilitating a homicide, but need not have known that the principal had the kind of culpability required for any particular degree of murder.” Sarausad, 109 Wn. App. at 836.

2. The State did not prove beyond a reasonable doubt either that Mr. Gobat killed Mr. Barker or that he acted with knowledge he was facilitating a homicide.

Both Mr. Griffiths and Mr. Gobat, the only two eyewitnesses who appeared at trial, testified that Mr. Gobat hit Mr. Barker only once with his hand, at the beginning of the incident. RP 277-79, 283-84, 318-19, 328, 468-69. There is no evidence that Mr. Gobat was armed or engaged in any other assaultive conduct. By contrast, according to what Mr. Griffiths and Mr. Ruiz told Ms. Ford, Mr. Griffiths kned Mr. Barker in the face and Mr. Ruiz stabbed him with a knife. RP 354-55, 364. The State therefore did not prove beyond a reasonable doubt that Mr. Gobat, rather than Mr. Griffiths or Mr. Ruiz, killed Mr. Barker.

The State also did not prove Mr. Gobat killed Mr. Barker as an accomplice because the State did not prove beyond a reasonable doubt that he acted with knowledge he was facilitating a murder. Both Mr. Griffiths and Mr. Gobat agreed the three men did not discuss ahead of

time what they were going to do when they encountered Mr. Barker; they did not have a plan. RP 277-78, 484. Also, neither of the men knew Mr. Ruiz was armed with a knife. RP 285, 474, 480. They did not learn until afterward that Mr. Ruiz had stabbed Mr. Barker. RP 285, 474, 480. Mr. Ruiz agreed that he acted alone in stabbing Mr. Barker and that neither Mr. Gobat nor Mr. Griffiths was aware he had stabbed him. RP 368-69.

Mr. Gobat never expected Mr. Barker to get hurt and was not aware of how badly he was hurt until after the incident was over. RP 486. He therefore did not act with knowledge that he was facilitating the killing of Mr. Barker.

In sum, the State did not prove beyond a reasonable doubt either that Mr. Gobat killed Mr. Barker or that he acted with knowledge he was facilitating a murder. Therefore, the State failed to prove the elements of the crime beyond a reasonable doubt.

3. The conviction must be reversed and the charge dismissed.

If the reviewing court finds insufficient evidence to prove an element of the crime, reversal is required. State v. Lee, 128 Wn.2d 151, 164, 904 P.2d 1143 (1995). Retrial following reversal for insufficient evidence is “unequivocally prohibited” and dismissal is the

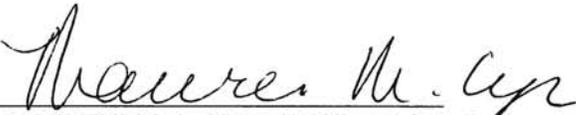
remedy. State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996) (“The double jeopardy clause of the Fifth Amendment to the U.S. Constitution protects against a second prosecution for the same offense, after acquittal, conviction, or a reversal for lack of sufficient evidence.”) (citing North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969), overruled in part on other grounds by Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201, 104 L. Ed. 2d 865 (1989)).

The State did not prove the elements of the crime beyond a reasonable doubt. The conviction must be reversed and the charge dismissed.

F. CONCLUSION

The State did not prove beyond a reasonable doubt that Mr. Gobat killed Mr. Barker or acted with knowledge he was facilitating the murder of Mr. Barker. Therefore, the conviction must be reversed and the charge dismissed.

Respectfully submitted this 28th day of June 2012.

  
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**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 67958-9-I
	)	
WILLIAM GOBAT,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28<sup>TH</sup> DAY OF JUNE, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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| [X] | WILLIAM GOBAT<br>353994<br>COYOTE RIDGE CORRECTIONS CENTER<br>PO BOX 769<br>CONNELL, WA 99326   | (X) U.S. MAIL<br>( ) HAND DELIVERY<br>( ) _____ |

**SIGNED** IN SEATTLE, WASHINGTON, THIS 28<sup>TH</sup> DAY OF JUNE, 2012.

X \_\_\_\_\_ 

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