IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 67777-2-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
JONTAE ROBERT CHATMAN,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: January 28, 2013

Spearman, J. — Jontae Chatman and two co-defendants fired dozens of rounds into a car containing four people. Chatman fired most of the rounds. The driver was killed and two passengers were struck by bullets. Chatman was convicted of one count of murder in the first degree and three counts of attempted murder in the second degree. On appeal, he contends (1) the evidence was insufficient to show he intended to kill the three passengers for the attempted murder counts and (2) the trial court violated CrR 6.5 in seating an alternate juror without conducting voir dire. We affirm, concluding the evidence was sufficient to support his convictions for attempted murder and the trial court

did not violate CrR 6.5.

FACTS

Chatman, Antoine Davis, Dominick Reed, and Nestor Ovidio-Mejia were friends. On April 7, 2009, Ovidio-Mejia and Reed discovered that their friend Ronald Preston had been shot and heard that Mario Spearman was responsible. That day, Chatman, Davis, Reed, and Ovidio-Mejia decided to seek revenge for Preston. They got in Reed's car and went in search of Spearman. At the intersection of 188th Avenue South and Pacific Highway, they spotted Spearman's car, a Cadillac with tinted windows. Spearman was in the driver's seat, David Route was in the front passenger seat, Paige Sauer was in the left-rear passenger seat, and two-year-old N.S. was in the right-rear passenger seat.

When the traffic light turned red, Reed stopped his car a few cars behind Spearman's. Chatman, Ovidio-Mejia, and Davis jumped out. Chatman was armed with an AK-47 and Ovidio-Mejia and Davis were armed with handguns. In the shooting spree that followed, Spearman's car was riddled with bullets, with evidence that approximately 30 shots were fired. The majority of shots were fired from the AK-47. The four defendants fled the scene, driven away by Reed.

Spearman died from multiple gunshot wounds. Route was struck multiple times, with wounds to his left hand and both legs. He survived but required several operations and physical therapy. Sauer suffered a grazing bullet wound

to her arm. When the shooting began, Sauer threw N.S. down and covered his body with hers. N.S. was not physically injured.

Chatman was charged in Count I with murder in the first degree (victim: Spearman), in Count II with attempted murder in the first degree (victim: Route), in Count III with attempted murder in the first degree (victim: Sauer), and in Count IV with attempted murder in the first degree (victim: N.S.).[1] Each count carried a firearm sentence enhancement.

At trial, the lead detective testified that Chatman admitted to shooting Spearman. Chatman also told the detective that he tried to avoid hitting the front-seat passenger and did not know there were passengers in the back seat. The State called detectives Thien Do and Steven Hager as witnesses. Do and Hager described the damage to the Cadillac as shown by trajectory analysis. Do testified that most of the bullet holes were on the driver's side of the Cadillac.

During closing argument, the prosecutor argued that Chatman was the principal and Davis and Ovidio were guilty as accomplices. The prosecutor argued that Chatman was guilty of the attempted murder of the three passengers under a "transferred intent" theory and also argued that Chatman's actions in firing approximately 20 rounds from the AK-47 showed he had the intent to kill

[1] Chatman was charged along with Reed, Davis, and Ovidio-Mejia. Reed pleaded guilty in a separate proceeding. Chatman was tried and convicted at a single trial with Davis and Ovidio-Mejia. All three defendants appealed. Davis's convictions were affirmed by this court in an unpublished opinion. State v. Davis, 170 Wn. App. 1005, 2012 WL 3264239 (2012). Chatman and Davis raised the same issues on appeal.

everyone inside the vehicle.

On July 26, 2010, after closing arguments, the trial court gave the jury concluding instructions and temporarily excused the two alternate jurors.[2] At the end of the following day, the prosecutor discovered that one of the jurors had committed misconduct by asking attorneys she worked with about the potential penalties faced by the defendants. When the prosecutor learned of the juror's misconduct, he immediately notified the court and opposing counsel. The court instructed the jury to cease deliberations until directed otherwise. A hearing was then held with all attorneys and defendants present. The court asked all of the defendants' attorneys if they had had sufficient time to talk with their clients about the jury misconduct issue. All replied that they had.

Inquiry of the offending juror was then conducted in open court. The juror admitted she had engaged in misconduct by seeking out information about

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[2] The court stated:

> And with that we have now concluded the closing arguments, and what I'm going to do is I'm going to release our alternates. Now, when I say release the alternate, what that means is that you're going home today but you will remain on call, because there is always a chance that one of the remaining 12 jurors will be unable to finish the case through the deliberations. If someone gets sick in deliberations – it happens, and if that's the case then we call in an alternate and you start deliberations all over again. Okay.
> …
> And frustratingly in the extreme is that while you're on call you still can't discuss this case amongst yourselves or with anyone else. And as soon as you're released from that we'll let you know.

7/26/10 VRP at 166-67.

punishment faced by the defendants. She had not discussed the information with any of the other jurors. With no objection from any party, the juror was excused. The court explained that it would call in one of the alternate jurors, and when this juror arrived, the entire jury would be properly instructed and deliberations would begin anew.

When the alternate juror appeared, the court told the parties that the jury would be read 11 Washington Practice: Washington Pattern Jury Instructions: Criminal (WPIC) 4.69.02, at 141 (3d ed. 2008) (WPIC) which informs the jurors that they must disregard all previous deliberations and begin deliberations anew. The court asked counsel for each defendant if he or she had anything to put on the record; each declined. The court instructed the jurors that they were required to disregard any prior deliberations and to begin deliberations anew.

The jury convicted Chatman as charged on Count I and of the lesser-included offense of attempted murder in the second degree on Counts II, III, and IV. The jury returned findings that Chatman was armed with a firearm on each count. The sentencing court imposed a standard-range sentence on each count, with firearm enhancements. Chatman appeals.

DISCUSSION

Sufficiency of the Evidence

Chatman first challenges the sufficiency of the evidence for the three

counts of attempted murder in the second degree, arguing the evidence did not show he had the intent to commit murder in the second degree. Evidence is sufficient to support a conviction if, "after viewing 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." Jackson v. Virginia, 443 U.S. 307, 318, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) (citing Johnson v. Louisiana, 406 U.S. 356, 362, 92 S.Ct. 1624-1625, 32 L.Ed.2d 152 (1972); State v. Green, 94 Wn.2d 216, 221, 616 P .2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence, and all reasonable inferences from the evidence are drawn in favor of the State and interpreted most strongly against the defendant. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). Circumstantial evidence and direct evidence are equally probative. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

A person commits attempted murder in the second degree if, with intent to commit murder in the second degree, "he or she does any act which is a substantial step toward the commission of that crime." RCW 9A.28.020(1); Clerk's Papers (CP) at 91 (Instruction 36); 11A Washington Practice:

Washington Pattern Jury Instructions: Criminal 100.01. A person commits murder in the second degree "when with intent to cause the death of another person but without premeditation, he or she causes the death of such person or of a third person." RCW 9A.32.050(a); CP at 87 (Instruction 32); WPIC 27.01.

Chatman argues he could not be liable under a transferred intent theory. But, notwithstanding the prosecutor's reference to transferred intent during closing argument, the jury was not instructed as to transferred intent. As Chatman acknowledges, his convictions for attempted murder in the second degree must stand if there was sufficient evidence to show that he had the intent to cause the deaths of the passengers.

Chatman contends the evidence was not sufficient to show he intended to kill the passengers because it showed he aimed only at Spearman and tried to avoid hitting the front-seat passenger, and the tinted windows proved he was unaware anyone was in the back seat. He points to the detectives' bullet trajectory testimony in support.

We conclude the evidence was sufficient to allow a rational jury to infer that Chatman saw the passengers inside the car and find that he intended to kill them in addition to Spearman. First, photographs of Spearman's car, admitted into evidence at trial, show that the windows of the Cadillac, though tinted, were not so dark as to prevent one from seeing the interior of the car. Additionally, a

witness at the scene testified that one of the car's windows was open. This evidence supports a reasonable inference that the passengers were visible to Chatman as he fired numerous times at Spearman's car.

Next, a rational trier of fact could find that Chatman intended to kill all three passengers given the nature and scope of the attack. Chatman fired approximately 20 rounds at the car, Route and Sauer were both struck, and there were bullet holes in the back seats. A witness described seeing the primary shooter begin to shoot at Spearman's car while he stood no more than three or four feet away from the right-side rear passenger seat and continue to shoot at the car as he walked around the rear of the car to the driver's seat. Furthermore, Hager and Do did not testify that the shooter was, as Chatman contends, aiming only at the driver. Do testified that a bullet trajectory could be determined only by matching a particular exterior bullet hole with a corresponding interior bullet hole or interior damage, but that there were several exterior bullet holes for which a corresponding hole or damage could not be found. There were also bullet holes in the center of the trunk next to the Cadillac emblem, neck-high in the rear window in line with where a right-rear passenger would be sitting, neck- or head-height in the rear window in line with where a left-rear passenger would be sitting, in the seat/headrest area of the left-rear passenger seat, in the rear quarter panel, in the left-rear passenger door, and in

the windshield.

Alternate Juror

Chatman next claims the trial court was required to conduct voir dire to determine the alternate juror's continued impartiality before seating that juror. He contends failure to do so violated CrR 6.5 and was reversible error.

We hold there was no error in this regard. CrR 6.5 sets forth the procedures for substituting an alternate juror during deliberations, stating, in pertinent part:

> Alternate jurors who do not replace a regular juror may be discharged or temporarily excused after the jury retires to consider its verdict. When jurors are temporarily excused but not discharged, the trial judge shall take appropriate steps to protect alternate jurors from influence, interference or publicity, which might affect that juror[']s ability to remain impartial and the trial judge may conduct brief voir dire before seating such alternate juror for any trial or deliberations. Such alternate juror may be recalled at any time that a regular juror is unable to serve, including a second phase of any trial that is bifurcated. If the jury has commenced deliberations prior to replacement of an initial juror with an alternate juror, the jury shall be instructed to disregard all previous deliberations and begin deliberations anew.

CrR 6.5 (emphasis added). As the plain language of the rule indicates, a trial court is not required to conduct voir dire of the alternate juror. It makes such voir dire permissive, at the court's discretion. State v. Chirinos, 161 Wn. App. 844, 848-49, 255 P.3d 809, rev. denied, 172 Wn.2d 1021, 268 P.3d 224 (2011) (permissive language of CrR 6.5 indicates trial court is not required to conduct a hearing prior to replacing a deliberating juror with an alternate juror; court has

discretion to do so where court deems it necessary to ensure that alternate juror has remained impartial). This is consistent with the portion of State v. Stanley, 120 Wn. App. 312, 85 P.3d 395 (2004) cited by Chatman, which states that the rule "clearly contemplate[s] a formal proceeding which may include brief voir dire to ensure that an alternate juror who has been temporarily excused and recalled has remained . . . impartial" Id. at 315 (emphasis added).

An abuse of discretion is shown when a reviewing court is satisfied that "'no reasonable judge would have reached the same conclusion.'" State v. Hopson, 113 Wn.2d 273, 284, 778 P.2d 1014 (1989) (quoting Sofie v. Fibreboard Corp., 112 Wn.2d 636, 667, 771 P.2d 711 (1989)). Chatman fails to make this showing. Here, when the trial court temporarily excused the alternate jurors, it instructed them to continue not to discuss the case with anyone. See CrR 6.5. When it was time to seat the alternate juror, the court notified all parties and held a hearing. The court gave each party an opportunity to be heard, to direct the court on how to proceed if the party felt the court was acting improperly, and to lodge any objections. Chatman never raised an objection or requested the court to engage in any other procedure beyond what was done. Chatman points to nothing in the record showing the trial court abused its discretion or that the alternate juror demonstrated a lack of ability to remain impartial.

Affirmed.

Spearman, J.

WE CONCUR:

Leach, C.J.

Schindler, J.