IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. ISAAC LEE CAVIL, Appellant.	No. 38916-9-II UNPUBLISHED OPINION

Armstrong, J. — Isaac Lee Cavil appeals his convictions for three counts of first degree assault, arguing that the State failed to prove him guilty as an accomplice beyond a reasonable doubt. Finding the evidence sufficient to support the convictions, we affirm.

FACTS

One evening in September 2007, Cavil called Regis Kindred to confront him about his relationship with A.J., a 17-year-old girl Cavil was dating.[1] The two men argued during the phone call, Cavil called Kindred a "bitch," and Kindred challenged Cavil to a fight. 3 Report of Proceedings (RP) at 385.

Cavil called 16-year-old O.Y. and asked him to "[b]ack him up in a fight," and to bring his shotgun. 3 RP at 133-34. O.Y. agreed and joined Cavil, Frederick Singleton, A.J., and A.J.'s 16-year-old brother, J.J. Cavil drove the group in his black Jeep to the apartment where Kindred was staying. O.Y. and J.J. saw Kindred and another young man on the porch. They saw another group of middle-aged women present nearby.

After the first pass of the apartment, Cavil made a u-turn and stated: "You guys know

[1] We refer to the minor co-defendants, who are not joined in this appeal, by their initials.

what to do." 3 RP at 151. O.Y. asked what they were doing and Cavil said "they were [going to] shoot the house, the apartment." 3 RP at 293. Cavil said "he [Cavil] don't feel like fighting no more, and let's just do a drive[-]by." 4 RP at 402.

Cavil took his 9-millimeter handgun from under the seat and gave it to J.J. Singleton handed O.Y. a .25 caliber pistol. The four men then pulled black bandanas over the lower half of their faces. A.J. tried to dissuade the men by telling them "there was a little girl in the house." 3 RP at 298. Singleton replied there was "a one in ten percent chance of hitting somebody." 3 RP at 298. Cavil agreed, stating, "[t]here's no accuracy because [we are] moving." 3 RP at 299.

Cavil drove back past the apartment and J.J. and O.Y. started shooting. J.J. could not see inside the apartment, but he intended to hit "the victims." 4 RP at 410, 434. O.Y. was "aiming toward the people who [he] assumed . . . was the target." 3 RP at 160. O.Y. admitted that the shots could have harmed someone because he "just shot a gun toward some people." 3 RP at 167.

Kindred was staying with his sister, Heidi Stewart, her husband, Nathaniel, and their two young children. Kindred was in the apartment when "bullets started [coming in] the house." 4 RP at 454-56. Heidi was in her kitchen when she heard a "loud sound." 5 RP at 524. Nathaniel was sitting on the couch and their daughter was standing by the sink. Heidi saw sheetrock dust flying in her dining room and realized "somebody was shooting at our house." 5 at RP 525. Heidi and Nathaniel screamed at their daughter to get down. The shots continued for between 7 and 30 seconds.

The State charged Cavil with three counts of first degree assault with firearm

enhancements under accomplice liability, one count of drive-by shooting under accomplice liability, and two counts of first degree unlawful possession of a firearm. A jury found Cavil guilty of three counts of first degree assault and the one count of drive-by shooting under accomplice liability. The jury also found that Cavil was armed with a firearm during the assaults.

ANALYSIS

I. Standard of Review

Cavil challenges the sufficiency of the evidence, specifically arguing that the State failed to prove that J.J and O.Y. intended to inflict great bodily harm. We disagree. We test the sufficiency of the evidence by asking whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We need not be convinced of the defendant's guilt beyond a reasonable doubt, only that substantial evidence supports the State's case. *State v. Fiser*, 99 Wn. App 714, 718, 995 P.2d 107 (2000). We consider circumstantial evidence and direct evidence equally reliable for the purpose of drawing inferences. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). And we defer to the jury's decisions resolving conflicting testimony, evaluating witness credibility, and determining the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

II. Sufficiency of the Evidence

A person commits first degree assault when, with intent to commit great bodily harm, he assaults another with a firearm. RCW 9A.36.011(1)(a). Great bodily harm is bodily injury that causes the probability of death, or that causes significant, serious, permanent disfigurement, or

that causes a significant, permanent loss or impairment of the function of any bodily part or organ. RCW 9A.04.110(4)(c).

A defendant is liable as an accomplice if, with knowledge that it will promote or facilitate the crime, he either: (1) solicits, commands, encourages, or requests another person to commit the crime or (2) aids or agrees to aid another person in the planning or committing the crime. RCW 9A.08.020(3)(a). The defendant must act with knowledge that he is facilitating the specific crime charged, not simply "a crime." *State v. Cronin*, 142 Wn.2d 568, 578-79, 14 P.3d 752 (2000). An accomplice need not participate in the crime, have specific knowledge of every element of the crime, or share the same mental state as the principal. *State v. Berube*, 150 Wn.2d 498, 511, 79 P.3d 1144 (2003). Rather, an accomplice must merely act with the knowledge that he is aiding a particular crime. *See State v. Whitaker*, 133 Wn. App. 199, 230, 135 P.3d 923 (2006). For example, in *State v. Salamanca*, 69 Wn. App. 817, 819-20, 851 P.2d 1242 (1993), the defendant drove a vehicle while a passenger fired multiple gunshots at the occupants of a fleeing car. Division Three of this court affirmed the defendant's conviction for first degree assault under accomplice liability, holding that the evidence was sufficient to prove intent where the defendant had made threats before the assault and there was a "logical probability" the assault would cause great bodily harm. *Salamanca*, 69 Wn. App. at 826 (citing *Delmarter*, 94 Wn.2d at 638).

The evidence here is sufficient for a rational trier of fact to convict Cavil of the first degree assault counts under accomplice liability. *See Salinas*, 119 Wn.2d at 201. The State did not have to prove that Cavil knew O.Y.'s and J.J's specific intent. *See Berube*, 150 Wn.2d at 511. Cavil

initiated the argument with Kindred and agreed to fight him. He was angry that Kindred called him a "bitch." 4 RP at 450. Cavil drove past Kindred, made the u-turn and said, "You guys know what to do." 3 RP at 151. He passed J.J. his 9-millimeter handgun, explaining that he didn't feel like fighting "no more, and let's just do a drive[-]by." 4 RP at 402. He attempted to mitigate A.J.'s concerns about potential harm by stating the accuracy was poor because the Jeep was moving. J.J. and O.Y. admitted they were aiming at "the victims" or "the targets" when they fired. 3 RP at 160, 209; 4 RP at 434. This evidence was sufficient for a rational trier of fact to conclude that Cavil knew there was a "logical probability" that the shooting would likely cause great bodily harm to the occupants of the apartment. *See Salamanca*, 69 Wn. App. at 826. Thus, the State produced sufficient evidence for a rational trier of fact to conclude that Cavil promoted or facilitated the three counts of first degree assault. RCW 9A.08.020. Accordingly, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Worswick, A.C.J.

Alexander, J.P.T.