

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

NICOLE ELISE ROBINSON,

Appellant.

No. 41772-3-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury found Nicole Robinson guilty of second degree malicious mischief. The trial court sentenced Robinson to 48 hours in jail and ordered her to pay legal financial obligations totaling \$3,089.69. Robinson argues that the evidence was insufficient to support her conviction and that the court erred by imposing legal financial obligations. Sufficient evidence supports Robinson’s conviction and her challenge to legal financial obligations is premature. Accordingly, we affirm.

FACTS

Robinson moved in with Alisha Willis¹ and her fiancé, Matt Hayes, in March 2008. Robinson was pregnant and single; Willis and Hayes invited her to live in their home rent-free so

¹ Alisha Willis married Matt Hayes and changed her name to Alisha Hayes prior to the time of trial. To avoid confusion, Alisha Hayes is referred to as Willis throughout.

that she could save money to use when the baby was born. Over a period of several months, the relationship between Robinson and Willis soured, and on July 14, 2008, Willis asked Robinson to move out. Willis told Robinson that she had one to two months to move out and that Willis and Hayes would assist her to find a new place and help her with her first month's rent.

The following day, Willis came home at 4 pm. With the assistance of her neighbor, she intended to bury her husband's cat, which had died that morning. On the table, Willis found a note from Robinson which said she would be back to retrieve her belongings. When her neighbor failed to arrive, Willis left the house at 4:30 pm. She placed the cat outside in a box for her neighbor to bury.

Willis returned to the home with her sister at about 8 pm to find red paint spilled on the steps and sidewalk and her front door locked with the deadbolt. Willis did not have a key for the deadbolt and had to help her sister enter the house through a window to unlock the door from the inside. When she entered the house, Willis found significant damage. Red paint was on the floor and sofa. Someone had written "fuck u!" on the wall, scribbled out Willis's face on pictures and had written "burn in hell cunt" on the bathroom mirror using a car marker. Ex. 3, 8. Bananas and eggs were exploded in the microwave. Willis found the dead cat inside her mattress in her bedroom. Baby clothes that Willis had bought Robinson as a gift and Robinson's key were sitting on the paint-damaged sofa.

Donald Bornstedt, who lived across the street, recognized Robinson as one of four people who came and frantically moved things out of the house in the late afternoon of July 15, 2008. He testified that Robinson and the others made two trips. The first time they were at the house for twenty to thirty minutes, moving things from the house to two vehicles. The vehicles were

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Robinson's grey Honda and a pickup truck. The group left for 15 or 20 minutes and then came back. When they returned, they stayed at the house for another 30 minutes. No one else came to the house until Willis and her sister arrived around 8 pm.

Kelso Police Department Sergeant Khembar Yund located Robinson's vehicle. He noted that the vehicle contained items consistent with someone moving. Yund contacted Robinson by phone. Robinson initially told him that she had not assisted in the move and did not know what had happened. When told that an eyewitness saw her at the scene, she admitted to being there, but denied any involvement in the damage. Yund was unable to match fingerprints on the car marker or footprints in the red paint to Robinson.

Jennifer Hughes testified that she was present at Willis's home with two other individuals and helped Robinson move. Hughes noticed spilled red paint, but testified that no one in the group assisting with the move had spilled it. She testified that the paint was in a puddle on the walkway, and had not been spread around. She admitted that Robinson was upset at being required to move out.

At the close of the State's case, Robinson moved to dismiss the case based on insufficient evidence. The trial judge denied the motion, noting that the evidence was slim but sufficient to submit to the jury. The jury convicted Robinson of second-degree malicious mischief on December 13, 2010. The court denied Robinson's motion for judgment notwithstanding the verdict, sentenced Robinson to 48 hours in jail and imposed \$3,089.69 in legal financial obligations. The court ordered that Robinson make payments in the amount of \$50 per month. Robinson appeals her conviction and the legal financial obligations.

ANALYSIS

Sufficiency of the Evidence

“The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The reviewing court must accept the truth of the State’s evidence and all inferences that can reasonably be drawn from that evidence. *Salinas*, 119 Wn.2d at 201. The reviewing court “must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.” *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)). Circumstantial evidence and direct evidence are equally reliable in determining sufficiency of the evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Robinson acknowledges that the State proved someone committed second degree malicious mischief by damaging Willis’s property. She argues only that the State failed to present sufficient evidence to prove that she committed the crime as either a principal or accomplice. We disagree.

Taken in the light most favorable to it, the State presented evidence that (1) when Willis left the house it was undamaged; (2) Bornstedt’s testimony placed Robinson at Willis’s house between the time Willis left the house and the time she returned; (3) Robinson and Hughes admitted that Robinson was in the house during that period; (4) no witnesses testified to seeing anyone enter Willis’s house during the time she was gone, other than Robinson and the three individuals helping her move; (5) Willis asked Robinson to move out the night before; (6) Hughes

testified that Robinson was upset with Willis about being asked to move; (7) the type of damage suggests an act by someone angry at the occupants of the house; (8) the damage appeared to be directed toward Willis through profanities written on the wall, Willis's face scribbled out in pictures, and the dead cat placed in her bed; (9) baby clothes and a card that Willis had given to Robinson were left on the paint-damaged couch; and (10) Robinson's key lay on the couch beside the baby clothes. A reasonable jury could find, based on this evidence, that the damage to Willis's home was caused by people seen coming and going from the home during the period Willis was gone. A reasonable jury could further find that Robinson had an apparent reason to hold animus towards Willis and participated in the crime as either a principal or an accomplice, leaving items belonging to her—baby clothes Willis had given her and the key she was given to use while living there—in the paint on the ruined couch. This evidence was sufficient to support the jury's verdict finding Robinson guilty of second degree malicious mischief.

Order Imposing Costs and Attorney fees

Robinson argues that the trial court erred by ordering her to pay the portion of her legal financial obligation dedicated to court costs and attorney fees because she does not have the ability to pay and that the court erred by failing to make specific findings that she had the ability to pay. A court may not order a defendant to pay costs unless the court determines that the defendant has the present or future ability to pay. RCW 10.01.160(3). But as the Washington Supreme Court recently explained, the relevant question in determining the validity of a sentencing condition imposing legal financial obligations is whether the defendant is indigent at the time the State attempts to enforce the obligation. *State v. Valencia*, 169 Wn.2d 782, 789, 239 P.3d 1059 (2010). Challenges to sentencing conditions imposing legal financial obligations are

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therefore not ripe for review until the State attempts to enforce the obligations. *Valencia*, 169 Wn.2d at 789 (citing *State v. Ziegenfuss*, 118 Wn. App. 110, 113-15, 74 P.3d 1205 (2003), review denied, 151 Wn.2d 1016 (2004)); see also *State v. Phillips*, 65 Wn. App. 239, 243-44, 828 P.2d 42 (1992) (constitutional challenge to imposition of costs was not ripe for review; it is at point of enforcement of financial obligations that indigent may assert constitutional objection to payment). Because the State has not attempted to enforce payment, Robinson's challenge to her legal financial obligations is premature.

We affirm Robinson's conviction. We do not reach her challenge to her legal financial obligations.

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 in accordance with RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

HUNT, P.J.

VAN DEREN, J.