

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-1278

MARY ARLETTE KING,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Bay County.
Brantley S. Clark, Jr., Judge.

November 13, 2019

B.L. THOMAS, J.

Appellant challenges the trial court's ruling denying her motion for judgment of acquittal as to counts one and two, denying her specially requested jury instruction on causation, and admitting a flounder gig and related pictures into evidence over defense counsel's objection. Appellant was charged with one count of principal to manslaughter and one count of aggravated battery by striking the victim with a flounder gig*.

* A gig is a pronged spear used for catching fish. Gig, *Merriam-Webster's Collegiate Dictionary* (10th ed. 1998). Its design resembles that of a trident.

Facts

Appellant, the victim, and Thomas Hutchinson, the victim's friend and Appellant's co-defendant, charged as a principal to manslaughter by culpable negligence, went boating in West Bay to gator hunt. Eventually, however, they began harvesting other people's crab traps. They were all drinking.

At some point during their travels the boat began taking on water. The victim refused to move to the middle of the boat to keep the boat from sinking. Eventually the boat took on so much water that the three had to push the boat to shore. The victim then refused to help the other two bail the water out of the boat. The victim said since it was not his boat he was not going to help. This made Hutchinson angry. Appellant was also frustrated with the victim for his failure to cooperate.

In her frustration, Appellant punched the victim one time in the face with her fist. She then stabbed the victim one time with a flounder gig. While she was getting the flounder gig, Hutchinson punched and stabbed the victim. Appellant was unaware that Hutchinson stabbed the victim until later. Hutchinson then yelled at the victim for disrespecting his boat and told the victim to leave. The victim obliged and was last seen swimming over to some nearby trees while holding his side.

Appellant and Hutchinson waited for hours to be rescued. About a half-hour after the victim swam away, Hutchinson told Appellant that he had stabbed the victim. He told Appellant that he sliced the victim in his back, but not bad enough to kill him.

Eventually the Bay County Sheriff's Office sent out a helicopter to search for the stranded boat and its three passengers. The helicopter pilot and a deputy located the partially sunken boat on a levy. The thermal imaging device detected three heat signatures, but when the deputy shined a spot light in the area, he only saw two people. The pilot circled the boat long enough to confirm that a private search party reached the stranded passengers.

In the early morning hours, the private search party towed the stranded boat and its two passengers back to the dock at Carl

Grey Park. Two officers from the Florida Fish and Wildlife Conservation Commission were present when the boat came in and they observed a flounder gig in the boat.

Due to an outstanding warrant, Appellant was detained and taken into custody shortly after the boat arrived at the dock. Hutchinson gave a statement to the officers. He told the officers that he and the victim had argued about taking traps illegally, so the victim got out of the boat and swam to shore. Based on this information, the officers did not send a search party to look for the victim.

Officers later received information causing them to suspect that the victim's welfare was not as previously represented by Hutchinson. A sergeant with the Bay County Sheriff's Office went to the jail to speak with Appellant. Appellant told the sergeant that the victim had been drunk, punched in the face, and sliced up by a knife. Later, in two subsequent interviews, Appellant admitted to hitting the victim once in the face and stabbing him once with a flounder gig.

Based on the information provided by Appellant, the officers initiated a search. Shortly after the search resumed the next day, the victim's body was found floating face down in East Bay. On that same day, officers went to Hutchinson's residence and seized a nine-foot, three-pronged flounder gig found in between a shed and a chain link fence.

The victim's body bore a number of bruises, lacerations, and one or more puncture wounds. There were puncture wounds under the victim's eyes and on top of the bridge of his nose. He also had a contusion on his scalp and neck from blunt force trauma. The victim had puncture wounds on the right side of his body similar to those on his face. On his left side, there was bruising on his armpit and chest, as well as an incised wound on his left arm. There were two large puncture wounds on his hand. The victim also suffered from three puncture wounds on his left forearm, one of which would have caused permanent disfigurement, and possibly permanent disability. The medical examiner who performed the autopsy determined that the injuries to the victim's forearm were caused by a hook.

The medical examiner also determined that the victim's cause of death was accidental drowning. No time of death could be established, and the victim's blood alcohol level was .303%. The medical examiner concluded that none of the victim's injuries contributed to or caused the victim's death. Any amount of blood loss that occurred was so negligible that loss of blood was not a contributing factor.

At trial, the court permitted the State to introduce into evidence a flounder gig and pictures of the gig over defense counsel's objections. At the close of the State's case, Appellant moved for a judgment of acquittal on the charge of aggravated battery. Appellant asserted that the State's evidence failed to establish any intent to cause great bodily harm or permanent disfigurement and failed to establish her use of a gig in such a way as to make it a deadly weapon. The trial court denied Appellant's motion.

Appellant also moved for a judgment of acquittal as to the offense of principal to manslaughter. She argued that the State's evidence was insufficient to show that: (1) her demonstrated conduct was the cause of the victim's death; and (2) she had done anything to encourage or assist Hutchinson in his actions of refusing to allow the victim back on the disabled boat or ordering him to swim back to shore. She also argued that the State's evidence was purely circumstantial and was legally insufficient to exclude the reasonable hypothesis of innocence that the victim drowned from voluntary intoxication. The trial court denied the motion.

At the time of the charge conference, Appellant submitted a written special jury instruction on the causation element of manslaughter. The State objected to the instruction and urged the trial court to rely on the standard instruction defining culpable negligence. The trial court denied the use of the special jury instruction.

The jury returned verdicts finding Appellant guilty, as charged, of principal to manslaughter and aggravated battery. Appellant was adjudicated guilty on both counts and concurrent sentences of fourteen years' incarceration were imposed.

Analysis

Appellant argues that the trial court erred in denying her motion for judgment of acquittal for the charge of principal to manslaughter because there was legally insufficient evidence to convict her as a principal or establish that her culpable negligence caused the victim's death. The State presented both direct and circumstantial evidence; therefore, the proper determination is whether the State presented competent substantial evidence as to each element of the crime. *See Dunn v. State*, 206 So. 3d 802, 804 (Fla. 1st DCA 2016).

A principal is a person who “aids, abets, counsels, hires, or otherwise procures” a felony or misdemeanor to be committed. § 777.011, Fla. Stat. (2015). For the specific crime of principal to manslaughter by culpable negligence, the State must prove that the defendant intended that an act constituting culpable negligence be committed and that he did some act to assist in the crime. “In order to be guilty as a principal for a crime physically committed by another, one must intend that the crime be committed and do some act to assist the other person in actually committing the crime. *Staten v. State*, 519 So. 2d 622, 624 (Fla. 1988) (citations omitted).

To be guilty as a principal to manslaughter by culpable negligence, a defendant must act or engage in conduct that is likely to cause serious injury or death, as noted in the Standard Jury Instructions:

Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness. . . or such an indifference to the rights of others as is equivalent to an intentional violation of such rights. The negligent act must have been committed with an utter disregard for the safety of others. Culpable negligence is doing an act or following a course of conduct that the defendant must have known, or reasonably

should have known, was likely to cause death or great bodily injury.

Fla. Std. Jury Inst. (Crim.) 7.7. “We evaluate the totality of the circumstances, as reflected in the record, in determining whether the facts presented constitute culpable negligence. If the evidence is sufficient to establish a jury question . . . we must affirm.” *Ramos v. State*, 89 So. 3d 1119, 1121 (Fla. 1st DCA 2012). In considering the totality of the circumstances, the evidence here was legally sufficient to allow the jury to decide whether Appellant was guilty as a principal to manslaughter by culpable negligence.

Appellant was the first person to instigate violence towards the victim. Appellant admitted that she intentionally punched the victim because she was frustrated by his actions. Appellant also admitted striking the victim once with a flounder gig because he made her angry. Appellant knew that Hutchinson punched him hard enough to knock him down. Appellant also heard Hutchinson tell the victim to leave, go, and swim back to shore. She did not attempt to dissuade the victim from leaving or offer to help him back into the boat.

Furthermore, Appellant knew that the victim was intoxicated. Additionally, after learning that the victim had been stabbed by Hutchinson, Appellant did not attempt to help him in any manner. Finally, Appellant neglected to tell law enforcement officers about the victim’s condition until they interviewed her the day after she was rescued.

Based on the above information, Appellant reasonably should have known that her actions would cause the victim great bodily harm and would expose the victim to potentially lethal harm; that is, Appellant’s actions showed a reckless disregard for human life. The State provided competent substantial evidence that Appellant both intended to commit an act constituting culpable negligence and assisted the perpetrator in committing a crime. Thus, the trial court correctly denied the motion.

Appellant also argues that the trial court erred in denying Appellant’s motion for judgment of acquittal for the charge of aggravated battery, where the State’s evidence was insufficient to prove Appellant used a deadly weapon or that Appellant had the

requisite intent. A weapon is considered deadly when it is used in a way likely to produce death or great bodily harm. Fla. Std. Jury Instr. (Crim.) 8.4; *see also Wallace v. State*, 240 So. 3d 872, 874 (Fla. 1st DCA 2018). While an instrument may not ordinarily be a deadly weapon, the context in which it is used can transform it into one. *S.G. v. State*, 250 So. 3d 775, 776 (Fla. 1st DCA 2018).

Based on the way Appellant used the flounder gig and the context in which it was used, it was a deadly weapon. Appellant admitted to stabbing the victim with the gig. She also admitted that the gig was long with three prongs on the end. She stabbed the victim with the gig in a way which caused injury. Thus, the State presented competent substantial evidence for the jury to determine that Appellant's use of the flounder gig constituted use of a deadly weapon.

The State could also prove aggravated battery by showing that Appellant intentionally or knowingly caused great bodily harm, permanent disability, or permanent disfigurement to the victim. § 784.045(1)(a)1, Fla. Stat. (2015); Fla. Std. Jury Instr. (Crim.) 8.4. A trial court should rarely, if ever, grant a motion for judgment of acquittal on the issue of intent because proof of intent usually consists of the surrounding circumstances of the case. *Washington v. State*, 737 So. 2d 1208, 1215-16 (Fla. 1st DCA 1999). Important considerations regarding intent in an aggravated battery include "the 'extent and nature of a victim's injuries,' the 'circumstances particular to each situation,' the 'amount of force used,' and 'the manner of attack.'" *Montero v. State*, 225 So. 3d 340, 342 (Fla. 2d DCA 2017) (quoting *State v. Gee*, 624 So. 2d 284, 285 (Fla. 2d DCA 1993)); *McKnight v. State*, 492 So. 2d 450, 451 (Fla. 2d DCA 1986).

Consideration of the above factors persuades us that the state presented sufficient evidence to allow the jury to decide that Appellant had the requisite intent to commit great bodily harm, permanent disability, or permanent disfigurement. The extent and nature of the victim's injuries were significant. One of the wounds on the victim's hand extended into the skin, between the bones and the tendons, and into the muscle between the victim's fingers. Additionally, one of the wounds on the forearm was approximately one-and-a-half centimeters deep.

The circumstances and the manner of the attack support a conclusion that Appellant had the requisite intent to commit an aggravated battery. Appellant stated that she was angry and frustrated with the victim. She also admitted to intentionally hitting the victim in the face and stabbing him with the flounder gig.

The force Appellant used was great enough to push the flounder gig through the victim's skin and fat and into the muscle of his forearm. The wound nearly went between the two bones in his arm. The wound on the victim's hand went between the bones and the tendons and into the muscle between his fingers. In her statement to police, Appellant mentioned that the gig was not sharp, which is evidence that even more force was required to cause the victim's injuries. Finally, the medical examiner testified that two of the victim's injuries would cause permanent disfigurement and possibly permanent disability. He stated that the wounds to the victim's hand and forearm would cause permanent disfigurement.

The State presented competent substantial evidence from which a jury could determine that Appellant intentionally or knowingly caused the victim great bodily harm, permanent disability, *or* permanent disfigurement. The trial court thus correctly denied Appellant's motion for judgment of acquittal on count two, aggravated battery.

Appellant's next argument concerns the trial court's denial of her specially requested jury instruction on causation regarding the principal to manslaughter charge. Appellant's requested instruction stated:

To prove that the negligent act or omission of the Defendant caused the decedent's death, the State must prove that the Defendant's act or omission was both the

- 1) cause in fact of the decedent's death, and
- 2) the proximate cause of decedent's death.

"Cause in Fact" means that but for the Defendant's act or omission the decedent would have died.

“Proximate Cause” means that the decedent died as a natural, direct, uninterrupted consequence of the Defendant’s act or omission.

A trial court’s failure to give a special jury instruction is in error if: (1) the special instruction was supported by the evidence; (2) the standard instruction did not adequately cover the theory of defense; and (3) the special instruction was a correct statement of the law and not misleading or confusing. *Stephens v. State*, 787 So. 2d 747, 755-56 (Fla. 2001).

Appellant’s requested jury instruction would have been misleading or confusing to the jury. Because Appellant was charged as a principal to manslaughter, the State did not have to prove that Appellant’s conduct was the cause of the victim’s death. § 777.011, Fla. Stat. (2015). Instead, the State had to prove that Appellant intended to participate in the crime of manslaughter, and in some way assisted the person who committed the crime. *Staten v. State*, 519 So. 2d 622, 623-24 (Fla. 1988) (finding evidence to convict defendant as a principal when she was present when the robbery was planned, waited in the car across the street as the robbery and murder took place, and then drove the getaway car was legally sufficient).

The trial court’s use of Appellant’s requested instruction on causation would have incorrectly applied the law and misled or confused the jury. As a result, the trial court’s failure to use Appellant’s requested instruction was not an abuse of discretion; it was in fact the correct ruling. *See Stephens*, 787 So. 2d at 755-57.

Finally, Appellant argues that the trial court abused its discretion in allowing the State to introduce a flounder gig and pictures involving the flounder gig into evidence. Appellant first challenges the authentication of the evidence. Authentication occurs when there is sufficient evidence to support a finding that the matter in question is what the proponent claims it to be. § 90.901, Fla. Stat. (2015). Both the flounder gig and the pictures were properly authenticated by the State’s witnesses.

Appellant also challenges the relevancy of the State’s evidence. Relevant evidence proves or disproves a material fact. Section 90.401, Fla. Stat. (2015). For a weapon to be admitted into

evidence the weapon must be relevant to the crime, which means there is an adequate nexus between the crime and the weapon. *Gartner v. State*, 118 So. 3d 273, 276 (Fla. 4th DCA 2013). In determining whether a sufficient nexus exists, the trial court can consider testimony identifying similarities between the weapon used in the crime and the weapon proffered at trial, as well as the lapse in time between the crime and the discovery of the proffered evidence. *Id.* A sufficient nexus does not require testimony that the proffered weapon is definitively the weapon that was used during the crime. *Id.*

Appellant stated that she stabbed the victim with a long, three-pronged flounder gig. Additionally, two officers from the Fish and Wildlife Commission observed a flounder gig in the boat when the two passengers were rescued. Officers then discovered a flounder gig at Hutchinson's residence the day after the incident occurred. The flounder gig was the only one found at the residence. Finally, the medical examiner testified that there were puncture wounds on the victim that matched the specific measurements of the flounder gig introduced into evidence.

Pictures can be admitted into evidence if they are relevant to any issue required to be proven in a case. *Kirby v. State*, 625 So. 2d 51, 53 (Fla. 3d DCA 1993). The pictures of the flounder gig were relevant to prove the issue of whether Appellant committed an aggravated battery against the victim by using a deadly weapon. Thus, the trial court did not err in admitting the flounder gig or the pictures.

AFFIRMED.

LEWIS and ROBERTS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Andy Thomas, Public Defender, David A. Henson, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, Virginia Chester Harris, Assistant Attorney General, Tallahassee, for Appellee.