

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Personal Restraint
of

CHARLES JEROME COURTNEY

Petitioner.

No. 80502-9-I

DIVISION ONE

UNPUBLISHED OPINION

APPELWICK, J. — Courtney petitions for relief from personal restraint resulting from his convictions of murder in the first degree and possession of heroin with intent to deliver. Courtney contends that the State presented insufficient evidence for a jury to find that he acted with premeditated specific intent to kill the victim, as required by the to-convict instruction. He also challenges the sufficiency of the evidence to prove that he intended to deliver drugs that he possessed at the time of his arrest. We reject his claims and deny the personal restraint petition.

FACTS

On the evening of October 5, 2015, Anthony Boro and some friends went to the apartment complex where Charles Courtney lived.¹ State v. Courtney, No. 76108-1-I, slip op. at 1 (Wash. Ct. App. April 23, 2018) (unpublished), <http://www.courts.wa.gov/opinions/pdf/761081.PDF>. One of the people with Boro that night had previously stayed overnight at Courtney's apartment, but developed

¹ The background facts are set forth in our unpublished decision affirming Courtney's convictions on direct appeal. State v. Courtney, No. 76108-1-I (Wash. Ct. App. April 23, 2018) (unpublished), <http://www.courts.wa.gov/opinions/pdf/761081.PDF>.

a conflict with Courtney that escalated into mutual threats. Id. at 2. According to another member of Boro's group, Boro wanted to rob Courtney. Id. Believing that they saw Courtney or one of Courtney's friends, Boro's friends decided to leave the apartment complex, but inadvertently left Boro behind. Id.

Courtney later told police officers that around this time, an unknown person tried to forcibly open the door to his apartment. Id. at 1. Courtney and a friend, Jesse Landrum, opened the door and chased the unknown person, later identified as Boro, into the parking lot. Id. As Boro fled, Courtney stopped running, pulled out his firearm, and shot him once in the back. Id. at 1-2. Boro fell to the ground and died at the scene. Id. at 2.

DISCUSSION

I. Standard of Review

Relief by means of a collateral challenge to a conviction is extraordinary and a petitioner must meet a high standard before this court will disturb an otherwise settled judgment. In re Pers. Restraint of Coats, 173 Wn.2d 123, 132, 267 P.3d 324 (2011). An appellate court may grant relief to a petitioner who is under restraint if the restraint is unlawful. RAP 16.4(c). Restraint is unlawful when a conviction is obtained in violation of the United States Constitution or the laws of the state of Washington. RAP 16.4(c)(2).

A petitioner has the burden of demonstrating error and, if the error is constitutional, actual and substantial prejudice. In re Pers. Restraint of Sandoval, 189 Wn.2d 811, 821, 408 P.3d 675 (2018). If the error is not constitutional, the petitioner must show that the error represents a "fundamental defect . . . that

inherently resulted in a complete miscarriage of justice.” Id. (quoting In re Pers. Restraint of Finstad, 177 Wn.2d 501, 506, 301 P.3d 450 (2013)).

Under both the federal and state constitutions, due process requires that the State prove every element of a crime beyond a reasonable doubt. U.S. CONST. amend. XIV; WASH. CONST. art. I, § 3; State v. Johnson, 188 Wn.2d 742, 750, 762, 399 P.3d 507 (2017). In reviewing a claim for insufficient evidence, this court considers “whether, 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.” State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). We draw all reasonable inferences from the evidence in favor of the State and interpret the evidence most strongly against the defendant. State v. Munoz–Rivera, 190 Wn. App. 870, 882, 361 P.3d 182 (2015). For purposes of a collateral challenge, a conviction based on insufficient evidence violates due process and results in an unlawful restraint. In re Pers. Restraint of Martinez, 171 Wn.2d 354, 364, 256 P.3d 277 (2011).

II. Evidence of Intent

The first degree murder statute does not require proof that the defendant acted with premeditated intent to cause the death of a specifically named individual. See RCW 9A.32.030(1)(a). Instead, it requires the State to prove that the defendant acted with premeditated intent to cause the death of “another person.” Id. But, here, the to-convict instruction required more than the statutory elements. The instruction provided, in relevant part,

To convict the defendant of murder in the first degree, as charged in Count I, each of the following elements must be proved beyond a reasonable doubt:

- (1) That on or about the 6th day of October, 2015, the defendant acted with intent to cause the death of [Anthony Boro];
- (2) That the intent to cause the death was premeditated;
- (3) That [Anthony Boro] died as a result of the defendant's acts.

The State did not object to this instruction and consequently, the jury instruction became the law of the case. See Johnson, 188 Wn.2d at 762 (“law of the case’ doctrine . . . requires the State to prove every element in the to-convict instruction beyond a reasonable doubt”); State v. Hickman, 135 Wn.2d 97, 101-02, 954 P.2d 900 (1998) (state assumes the burden of proving otherwise unnecessary elements of offenses when such elements are included, without objection, in a to-convict instruction). Courtney contends that because he did not know Boro or the identity of the person he shot, the State presented insufficient evidence that he acted with specific premeditated intent to cause Boro’s death.

As a threshold matter, the State maintains that Courtney may not mount this challenge on collateral review because his sufficiency of the evidence claim is premised on the law of the case doctrine. The State asserts that collateral review of nonconstitutional error is limited to claims based on statutes with “some connection with constitutional rights.” No authority supports this position. Under current law, a “conviction may be collaterally challenged on any grounds” within a year after the conviction is final. Coats, 173 Wn.2d at 131 (emphasis added). And, while collateral review is limited, even within the first year, it is because of the

significant burdens that petitioners must meet, not because certain issues are excluded from its scope. Id.; In re Pers. Restraint of Cook, 114 Wn.2d 802, 8010-12, 792 P.2d 506 (1990). Our courts have addressed a variety of errors in collateral proceedings that do not implicate constitutional rights. See e.g. In re Pers. Restraint of Carrier, 173 Wn.2d 791, 818, 272 P.3d 209 (2012) (reviewing error of including dismissed conviction as strike offense); In re Pers. Restraint of Goodwin, 146 Wn.2d 861, 868, 50 P.3d 618 (2002) (reviewing error based on erroneous offender score); Finstad, 177 Wn.2d at 508 (reviewing error based on failure to comply with statute authorizing consecutive sentence).

Alternatively, the State argues that review of Courtney's claim should be governed by the more rigorous nonconstitutional error standard: a "fundamental defect . . . that inherently results in a complete miscarriage of justice." This is so, according to the State, because Washington's "law of the case" doctrine is grounded in state common law and procedural rules, rather than federal due process. See Johnson, 188 Wn.2d at 747, 762. But, we need not reach the question of which standard applies because it is clear that Courtney meets neither. When measured against the elements set forth in the to-convict standard, the evidence was sufficient to support Courtney's murder conviction.

It was undisputed that Courtney and Boro had not met prior to the shooting. Courtney maintains that, without evidence that he knew that Boro was the person he shot, the evidence was sufficient only to prove that he intended to kill another person. But, nothing in the to-convict instruction required proof of Courtney's

knowledge of Boro's identity. The instruction required only proof that Courtney intended to kill a specific person, and that person was Boro.

The evidence, including Courtney's own statements, demonstrated that Courtney intended to kill the individual he saw through the peephole of his apartment door. Courtney believed that person had attempted to break into his apartment. Courtney, who was armed, summoned Landrum for assistance and opened the door to confront Boro. Boro ran down the apartment stairs. They chased Boro. Courtney directed Landrum to loop around to the right, in order to force Boro into Courtney's path. Courtney, who had prior military training, stopped running, drew his firearm, and waited until he had Boro in his sights and a clear shot. He then shot Boro in the back. From this evidence, a rational trier of fact could have found beyond a reasonable doubt that Courtney intended to kill a specific person, Boro. Courtney's acts were directed at a specific person, even though Courtney did not know the identity of that person until after the shooting.

Contrary to Courtney's argument, our previous decision in State v. Tavares, No. 77004-7-1 (Wash. Ct. App. August 26, 2019) (unpublished), <https://www.courts.wa.gov/opinions/pdf/770047orderopinion.pdf>, does not compel a different analysis. That case involved a shooting at a house party where some of the people in attendance were associated with two affiliated gangs. Id. at 1-2. As here, the to-convict instruction required the State to prove beyond a reasonable doubt that the defendant, Tavares, intended to kill a specifically named victim in order to convict him of murder in the first degree. Id. at 8.

There was evidence that there was a rivalry between Tavares's gang and the gangs associated with the party-goers. Id. at 2-3. And, there was evidence that, at the time of the crime, Tavares had a specific motive to exact revenge against the rival gang members and he expressed a desire to do so. Id. at 3. After driving past the party and seeing multiple people outside at the back of the house, Tavares told the driver to stop, took a gun, and walked in the direction of the party. Id. at 4. Tavares fired several shots outside the house, saw a body fall, and ran back to the car. Id.

Tavares argued on appeal that there was evidence only of intent to kill rival gang members, but no evidence that he intended to kill the specifically named victim. Id. at 7. We disagreed. Id. at 10-11. Evidence that Tavares and his accomplices knew the victim was affiliated with the rival gangs was critical to our conclusion that the evidence was sufficient. Id. at 10. And, Tavares and at least one of his accomplices specifically knew the victim which supports an inference that the shooter would have recognized the victim prior to shooting him and therefore formed the intent to kill that person specifically. Id. at 10.

The facts here are materially different. The evidence showed that Courtney intended to confront, chase, and shoot a specific, single individual. He claimed he was defending himself because he believed that the individual had tried to forcibly enter his apartment. It is undisputed that the person who Courtney chased from his apartment and then shot was Boro. Evidence that Courtney knew Boro before this violent encounter was not necessary to prove that he acted with intent to cause Boro's death. Indeed, such evidence would not have significantly strengthened

the State's case. Because a rational trier of fact could have found the elements of the crime, as set forth in the to-convict instruction, beyond a reasonable doubt, the evidence was sufficient to support Courtney's conviction of murder.

III. Premeditation

Courtney contends the State failed to prove that he acted with premeditation as required by RCW 9A.32.030(1)(a).

Premeditation requires “the deliberate formation of and reflection upon the intent to take a human life and involves the mental process of thinking beforehand, deliberation, reflection, weighing or reasoning for a period of time, however short.” State v. Hummel, 196 Wn. App. 329, 354, 383 P.3d 592 (2016) (quoting State v. Hoffman, 116 Wn.2d 51, 82-83, 804 P.2d 577 (1991)). Premeditation must “involve more than a moment in point of time.” RCW 9A.32.020(1).

Particularly relevant to premeditation are motive, procurement of a weapon, stealth, and the method of killing. State v. DeJesus, 7 Wn. App. 2d 849, 883, 436 P.3d 834, review denied, 193 Wn.2d 1024, 448 P.3d 54 (2019). But, a “wide range” of other factors can also be relevant and can “support an inference of premeditation.” State v. Aguilar, 176 Wn. App. 264, 273, 308 P.3d 778 (2013). A court may consider the defendant's statements. State v. Barajas, 143 Wn. App. 24, 36, 177 P.3d 106 (2007). “Premeditation may be proved by circumstantial evidence where the inferences drawn by the jury are reasonable and the evidence supporting the jury's finding is substantial.” In re Pers. Restraint of Gentry, 125 Wn.2d 570, 598, 888 P.2d 1105 (1995). In sum, we consider the totality of the circumstances. See State v. Ollens, 107 Wn.2d 848, 855, 733 P.2d 984 (1987)

(Callow, J., concurring) (describing jury's determination of whether a killing was premeditated as "the evaluation of the totality of the evidence in the light of all of the surrounding circumstances").

Courtney claims that because he did not know Boro, there was no evidence that he planned to murder him or had a motive to do so. He characterizes the shooting as a "quick, spontaneous, impulsive" act. Courtney maintains that reliance on his conduct of stopping to take aim before firing the gun merely conflates the elements of intent and premeditation.

Viewed in the light most favorable to the State, the evidence supports the jury's conclusion that Courtney acted with premeditation. Courtney formulated a plan to kill Boro, even though he did so over a relatively brief period of time. And, while he did not know Boro's identity at the time, Courtney had a motive to kill him. Courtney believed that Boro had been attempting to break into his home. As he explained later to police officers, he did not want Boro to "get away" or to reattempt to burglarize his home.

Courtney sought the assistance of Landrum. Courtney announced his intent to kill Boro before shooting him. He employed a strategy to trap Boro, by directing Landrum to take a side route in order to force Boro into a position that would allow an unobstructed shot. He then waited for Boro to emerge and drew his firearm only when he had a clear view. He waited until he had Boro in his sights because he did not want to miss or inadvertently hit something or someone. Courtney shot Boro in the back. These facts give rise to a reasonable inference that Courtney deliberately formed the intent to take Boro's life.

IV. Possession with Intent to Deliver

Finally, Courtney challenges the sufficiency of the evidence to support his conviction of possession of heroin with intent to deliver.² Relying on the trial testimony of a law enforcement officer, Courtney argues that the amount of heroin he possessed at the time of his arrest was consistent with personal use. Therefore, he contends there is insufficient evidence in the record to support the jury's determination that he intended to deliver the controlled substance.

In order to prove unlawful possession of a controlled substance with intent to deliver, the State had to prove, beyond a reasonable doubt, that Courtney (1) unlawfully possessed, (2) a controlled substance, (3) with the intent to deliver it. RCW 69.50.401(1); Johnson, 188 Wn.2d at 750. "Mere possession of a controlled substance, including quantities greater than needed for personal use, is not sufficient to support an inference of intent to deliver." State v. O'Connor, 155 Wn. App. 282, 290, 229 P.3d 880 (2010). On the other hand, a large quantity of drugs is not required in order to find intent to deliver. State v. Zunker, 112 Wn. App. 130, 138, 48 P.3d 344 (2002). A small amount of drugs can be sufficient to support a jury finding when it is combined with other corroborating evidence. Id.

There were several pieces of corroborating evidence, including witness testimony that Courtney earned money by selling drugs. And, when he was arrested, in addition to heroin, Courtney also possessed a coin purse containing multiple small baggies that contained heroin residue. When law enforcement officers searched Courtney's apartment, they found more plastic baggies

² Courtney raised this claim in his initial pro se personal restraint petition.

consistent with drug packaging and ledgers consistent with recording drug transactions. The person who, shortly after the shooting drove Courtney to the location where he purchased the heroin found in his possession testified that Courtney said he intended to sell it. Considering the totality of the evidence, and construing the evidence and all reasonable inferences therefrom in the light most favorable to the State, a rational trier of fact could reasonably conclude that Courtney possessed heroin with intent to deliver it.

Courtney fails to meet his burden to establish a constitutional error resulting in actual and substantial prejudice or a nonconstitutional error representing a fundamental defect that resulted in a complete miscarriage of justice. The petition is denied.

Tappelwick, J.

WE CONCUR:

Smith, J.

Andrus, A.C.J.