IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)	No. 65859-0-I
	)	
Respondent,	)	
	)	
v.	)	
	)	UNPUBLISHED OPINION
MUNNIER QUASIM,	)	
	)	
Appellant.	)	
	)	
	)	FILED: June 11, 2012

Spearman, A.C.J. — Munnier Quasim appeals his conviction for rape in the second degree. He contends that insufficient evidence supported the jury's verdict, that the trial court erred in admitting his statements absent independent evidence to establish the corpus delicti of the offense, and that the trial court's voir dire procedure of excluding jurors from the courtroom during preemptory challenges denied him a public trial. We affirm.

FACTS

Quasim and A.M. were neighbors in a Seattle apartment building. The two would get together about once a week to play dominoes, smoke marijuana, and drink. A.M. found Quasim "very friendly." A.M. testified that the two did not have a physical relationship because she was a lesbian, and that she did not make any advances

towards Quasim. However, Quasim made A.M. feel she was "being hit on . . . . He would definitely say this, that – it's just etched in my brain – I have patience. I can wait. I have patience."

The socializing between the two ended after a few months, when Quasim wrote two rambling notes to A.M. that she found "very vulgar and disrespectful and scary." The notes referred to another man Quasim believed A.M. was seeing, and indicated that Quasim felt rejected, jealous, and angry. A.M. reported the letters to the apartment manager, Sarah Van Cleve, who referred her to the Seattle Police Department. Seattle Police Officer John Skommesa spoke with Quasim, informing him that A.M. did not wish to have contact with him. For several months, Quasim and A.M. had little contact.

However, after A.M. was hospitalized in the summer of 2008, Quasim brought her fruit and water, and the two began socializing again. However, A.M. described their relationship as "tense," and testified that frequently she would not open her door when Quasim knocked, even though he knew she was in the apartment. They regularly consumed alcohol and marijuana when together.

On December 4, 2008, Quasim came to A.M.'s apartment with a bottle of tequila for her, a jar of alcoholic beverage for himself, and some marijuana. Quasim knew tequila was A.M.'s drink of choice, and he brought a "fifth" of the liquor on this occasion, which was unusual, because he usually brought "minis." A.M. invited him in. The two watched television, smoked marijuana, and drank alcohol. A.M. drank "two or three" small juice glasses of the tequila, an amount she testified would have no impact

on her, at most "[a] little buzz." A.M.'s last memory of the evening was watching television with Quasim.

Jorden Attenborough, A.M.'s next-door neighbor, heard glass break and A.M.'s dog barking that night. Around 12:30 a.m., he heard A.M. loudly shout "get off" or "get out" in a manner signaling displeasure. Attenborough triggered an alarm in his unit, and the building manager Donald Glick came to his apartment. The only noise Glick heard was the barking dog, so he terminated his involvement.

A.M. awoke the next morning naked and bruised, with broken glass in her hair. Her vagina hurt, her face was swollen, she had a black eye, and had suffered a closed head injury. She testified, "I could tell that I was beat up and raped." She felt as though she had been "really drugged . . . it was like I had taken a bunch of pills or something." The jar Quasim had been drinking from was broken on the floor, there were blood stains on the floor, a table was knocked over, and other furniture had shifted. She went to the apartment manager VanCleve, who called the police. A.M. was taken to the hospital for medical attention and transferred to Harborview Medical Center for a sexual assault examination.

Treatment providers confirmed A.M.'s injuries. The treating physician, Dr. Jared Remington, diagnosed her with a closed head injury and observed that she had a contusion or bruises to her scalp, tenderness in her upper spine, and abrasions along her left shoulder and forearm. Dr. Remington concluded that her head injuries were not likely caused by a fall. Sexual assault nurse Carol Stewart noted that A.M.'s vaginal

area was injured.

Seattle Police Sergeant Bernd Keurshner, Officer Anh Hoang and Officer Scott Elliott went to Quasim's apartment and questioned him. Quasim told the officers that he had expected their arrival and had prepared his account before they arrived. He told the officers that he had been in A.M.'s apartment, and had engaged in consensual sexual intercourse with her.

Officer Hoang also went to A.M.'s apartment on December 5, 2008, and collected the broken jar and three blood samples from the apartment floor. A few weeks later, a condom was found in A.M.'s apartment and given to police. Tests revealed the presence of deoxyribonucleic acid (DNA) from both Quasim and A.M. on the condom.

Quasim was prosecuted for rape in the second degree by forcible compulsion, and on the alternative theory that A.M. was incapable of consent due to being physically helpless or mentally incapable of resisting. A jury convicted Quasim as charged, finding by unanimous special verdict that he committed the offense both by forcible compulsion and by A.M.'s being unable to consent. He was sentenced to an indeterminate sentence of 102 months to life.

Quasim appeals.

ANALYSIS

I. Sufficiency of the Evidence

Quasim contends that insufficient evidence supports his conviction. We disagree.

The evidence is sufficient if after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. State v. Al-Hamdani, 109 Wn. App. 599, 608, 36 P.3d 1103 (2001) (quoting State v. Ortega-Martinez, 124 Wn.2d 702, 708, 881 P.2d 231 (1994)).

To convict Quasim of second degree rape, the State was required to prove beyond a reasonable doubt that he had sexual intercourse with A.M. by "forcible compulsion"[1] or that A.M. was "incapable of consent by reason of being physically helpless or mentally incapacitated."[2] RCW 9A.44.050(1)(a)(b). State v. Al-Hamdani, 109 Wn. App. 599, 602-03, 36 P.3d 1103 (2001). When viewed in the light most favorable to the State, there was sufficient evidence to allow a jury to find every element of the charged offense proved beyond a reasonable doubt.

As a preliminary matter, it was undisputed that there was sexual intercourse. Quasim testified that he had sexual intercourse with A.M. on the night of the alleged rape. This element was also established by the evidence at trial, including the condom containing Quasim's and A.M.'s DNA.[3]

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[1] "Forcible compulsion" includes "physical force which overcomes resistance." RCW 9A.44.010(6).

[2] "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause. RCW 9A.44.010 (4). "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act. RCW 9A.44.010(5).

[3] It was also undisputed that the events happened in Washington, and that the parties were not married to each other.

a. Forcible compulsion

When viewed in the light most favorable to the State, there was also sufficient evidence of forcible compulsion. A.M. was badly injured in a physical confrontation the night of the rape. There was ample evidence from A.M. and medical personnel that she suffered significant injuries to her head, face, and vaginal area. There was also evidence of a physical struggle in A.M.'s apartment, including the broken jar, the blood spots, and the furniture being shifted. A.M.'s next-door neighbor, Attenborough, testified that he heard yelling, breaking glass, and sounds consistent with a struggle. In addition, A.M. testified that she was a lesbian and didn't have sex with men, and was never interested in a sexual relationship with Quasim. The jury could have reasonably concluded from this testimony that A.M. was unlikely to have engaged in sexual intercourse with Quasim absent compulsion.

b. Incapable of consent because physically helpless or mentally incapacitated

When viewed in the light most favorable to the State, there was also sufficient evidence that A.M. was incapable of consent by reason of being physically helpless or mentally incapacitated. A.M. awoke with broken glass in her hair and on the floor, consistent with a bottle being broken over her head. She was diagnosed in the hospital as having suffered a closed head injury, and Dr. Remington testified that such an injury can result in amnesia. A.M. testified that she awoke from a state of being passed out, and was unable to recall anything from the previous night, despite the fact that she was a regular drinker and was unlikely to pass out from the small quantity she drank before

she lost consciousness. She testified she felt as though she had been drugged. From this evidence, the jury could have reasonably concluded that A.M. was highly intoxicated or unconscious, either from being hit on the head or from being drugged, or both, and was physically helpless or mentally incapable of consent.

Quasim's challenge to the sufficiency of the evidence fails.

II. Corpus Delicti

Quasim asserts that, independent of his statements, there was insufficient evidence to establish the corpus delicti of the charged offense. We disagree. The evidentiary record, independent of Quasim's statements, supports the reasonable inference that the charged offense occurred.

Before a defendant's remarks can be considered by the finder of fact, the State must first establish the corpus delicti of the crime by independent evidence. State v. Hummel, 165 Wn. App. 749, 758, 266 P.3d 269 (2012). The independent evidence may be direct or circumstantial and need not establish the corpus delicti beyond a reasonable doubt, or even by a preponderance of the evidence. Hummel, 165 Wn. App. at 758-59 (citing State v. Aten, 130 Wn.2d 640, 656, 927 P.2d 210 (1996)). It is sufficient if it prima facie establishes the corpus delicti.[4] Hummel, 165 Wn. App. at 758-59 (citing Aten, 130 Wn.2d at 656). In assessing whether there was sufficient evidence of the corpus delicti independent of a defendant's statements, this court assumes the

[4] "Prima facie" in the context of the corpus delicti rule means "'evidence of sufficient circumstances which would support a logical and reasonable inference' of the facts sought to be proved." Aten, 130 Wn.2d at 656 (quoting State v. Vangerpen, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995)).

truth of the State's evidence and draws all reasonable inferences from it in a light most favorable to the State. Aten, 130 Wn.2d at 658.

The State sought to admit several of Quasim's statements at trial. The first was a January 22, 2009 interview between Quasim and Seattle Police Detective Anthony Stevenson. The second and third were Quasim's testimony at court hearings on January 27, 2009 and February 2, 2009.[5] In all three, Quasim gave accounts of the night of the rape, in which he portrayed himself as resisting A.M.'s sexual advances and eventually having sexual intercourse with A.M.'s consent.[6]

When viewed in the light most favorable to the State, there was sufficient evidence, independent of Quasim's statements, to support a logical and reasonable inference that he was present in A.M.'s apartment at the time charged in the information. Specifically, A.M. testified to his presence. There was also evidence that

[5] At trial, the parties stipulated that the statements Quasim made in the civil hearings was his "testimony" in that civil proceeding. Although we conclude that the independent evidence is sufficient to establish that the charged offense occurred, there is abundant authority that the corpus delicti rule does not apply to statements made in open court. See Hummel, 165 Wn. App. at 758 n.1. (citing, inter alia, State v. Thompson, 73 Wn. App. 654, 658, 870 P.2d 1022 (1994) ("A defendant's extrajudicial confession is not admissible at trial unless independent proof establishes the corpus delicti of a crime."); State v. Neslund, 50 Wn. App. 531, 542, 749 P.2d 725 (1988) ("Under the corpus delicti rule, an extrajudicial confession or admission may not be considered by the trier of fact unless independent proof prima facie establishes the corpus delicti of the crime.") (citing Bremerton v. Corbett, 106 Wn.2d 569, 574-75, 723 P.2d 1135 (1986))(Emphases added); State v. Angulo, 148 Wn. App. 642, 656 n.2, 200 P.3d 752 (2009), rev. denied, 170 Wn.2d 1009, 236 P.3d 207 (2010). ("[T]he corpus delicti rule does not apply to in-court testimony."). Thus, Quasim's open court testimony in the civil proceeding was not subject to challenge on the basis of the corpus dilecti corroboration rule.

[6] A statement does not have to be an admission of guilt in order to fall within the purview of the corpus delicti rule. See State v. Brockob, 159 Wn.2d 311, 328 n.11, 150 P.3d 59 (2006) ("Courts use a variety of terms to describe a defendant's statement when analyzing corpus delicti . . . We refer to them uniformly as incriminating statements."); Aten, 130 Wn.2d at 657. Although Quasim's remarks were facially exculpatory, they placed him in A.M.'s apartment on the night of the rape, admitted that sexual intercourse occurred, allowed negative inferences concerning his credibility and evidenced animosity toward A.M.

there was sexual intercourse, independent of the defendant's statements, including the condom with Quasim's and A.M.'s DNA on it, and the medical evidence of penetration and of serious injuries to A.M's vaginal area.

There was sufficient corroborating evidence to allow the reasonable inference that A.M. did not consent to intercourse and was forcibly raped or unable to consent after being rendered unconscious, or both. This included evidence of A.M.'s injuries, her sexual preference, and the evidence of a struggle — the loud noises A.M.'s next-door neighbor, Attenborough, heard; the broken jar and disarray to A.M.'s apartment; the broken glass in her hair and on the floor; and the blood stains on the floor. Moreover, there was evidence that A.M. passed out and was unable to recall significant portions of the previous night.

Quasim argues that the State's independent evidence was equally consistent with a hypothesis of innocence as of guilt and failed to establish that a crime occurred.[7] However, independent proof of corpus delicti is sufficient if it supports the logical and reasonable inference that the charged crime was committed -- the evidence need not exclude every reasonable hypothesis consistent with the crime not having occurred. Hummel, 165 Wn. App. at 766; Neslund, 50 Wn. App. at 452 (citing Bremerton, 106 Wn.2d at 578. Here the record amply supports the logical and reasonable inference that the charged crime was committed. There was no trial court error.

[7] In support of his position, Quasim cites to Brockob, 159 Wn.2d at 330 and Aten, 130 Wn.2d at 656. The Brockob court relied upon the statement in Aten that the independent evidence "'must be consistent with guilt and inconsistent with a[ ] hypothesis of innocence.'" Brockob, 159 Wn.2d at 329, quoting Aten, 130 Wn.2d at 660. However the statement in Aten that proof of the corpus delicti must be inconsistent with innocence was both dictum and a misreading of a long-abandoned evidentiary and jury instruction standard that was unrelated the corpus delicti rule. See Hummel, 165 Wn. App. at 768, n.6.

III. Public Trial

Quasim argues that he is entitled to reversal of his conviction because the trial court required the attorneys to exercise preemptory challenges outside the presence of the jurors without first weighing the factors set forth in State v. Bone–Club, 128 Wn.2d 254, 906 P.2d 325 (1995). See State v. Strode, 167 Wn.2d 222, 217 P.3d 310 (2009) and State v. Momah, 167 Wn.2d 140, 217 P.3d 321 (2009) (Bone–Club factors must be weighed before courtroom closure). We conclude that the trial court's voir dire procedures did not result in a closure of the courtroom, and did not infringe on the public's right to an open trial proceeding.

a. No Violation of Public Trial Right

Whether the right to a public trial has been violated is a question of law reviewed de novo. Momah, 167 Wn.2d at 147 (citing Bone-Club, 128 Wn.2d at 256). Both article I, section 22 of the Washington Constitution and the Sixth Amendment to the United States Constitution provide a criminal defendant with a "public trial by an impartial jury." The right provides the accused a public trial and also provides the public a right of access to trial proceedings. Waller v. Georgia, 467 U.S. 39, 47, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984); Bone-Club, 128 Wn.2d at 259. However, trial courts have wide discretion to manage the voir dire processes, and relief will be granted on appeal only if the defendant can show error and prejudice. State v. Davis, 141 Wn.2d 798, 10 P.3d 977 (2000).

Here, the trial court utilized a voir dire process by which potential jurors were not

present in the courtroom when the trial attorneys exercised their preemptory challenges. The court explained its rationale for this procedure:

> I take Batson very seriously, more seriously than the U.S. Supreme Court does [these] days.
>
> So, I don't want to have, say, both of the African-American jurors walk out of our courtroom and then have a challenge and the inability to bring them back.
>
> Okay? I think that's an important enough purpose to exclude the jurors.

Defense counsel objected, arguing that the court's procedure implicated "the jurors' right to participate in the open court proceedings." The court explained that its procedure was not a courtroom closure, and that the public would have open access to the courtroom:

> Oh don't worry. We never close the courtroom when we're doing jury selection. We just send the jurors off to wait for the outcome. But they're here for the whole proceeding, and any audience person who wants to be here gets to be here. We never close our court.

Quasim argues that prospective jurors have the same right to open proceedings as other members of the public, citing Strode, 167 Wn.2d at 233 and Momah, 167 Wn.2d at 152. In Strode, the trial court sua sponte conducted in-chambers questioning of eleven prospective jurors, with the participation of the prosecution and defense counsel. Strode, 167 Wn.2d at 223-24. The Supreme Court concluded this closure order during voir dire necessitated reversal of the conviction because "the record is devoid of any showing that the trial court engaged in the detailed review that is required in order to protect the public trial right." Strode, 167 Wn.2d at 228. In Momah, the trial court conducted individual voir dire of at least eleven jurors in the court's

chambers. Momah, 167 Wn.2d at 148.

Both Strode and Momah are distinguishable because, here, there was no courtroom closure. A closure of a courtroom occurs:

> [W]hen the courtroom is completely and purposefully closed to spectators so that no one may enter and no one may leave. This does not apply to every proceeding that transpires within a courtroom but certainly applies during trial, and extends to those proceedings that cannot be easily distinguished from the trial itself.

State v. Lormor, 172 Wn.2d 85, 93, 257 P.3d 624 (2011). As was true in Lormor, Quasim's trial was conducted in an open courtroom, and public attendance was never prohibited. Lormor, 172 Wn.2d at 92. The trial court was not required to conduct a Bone-Club inquiry in these circumstances.

Since we find that no closure exists, we analyze this case as a matter of courtroom operations, where the trial court judge possesses broad discretion. Lormor, 172 Wn.2d at 93. In addition to its inherent authority, the trial court, under RCW 2.28.010,[8] has the power to "to provide for the orderly conduct of proceedings before it," and "[t]o control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto." RCW 2.28.010 (3), (5); Lormor, 172 Wn.2d at 93-

[8] In full, RCW 2.28.010 provides: "Every court of justice has power—(1) To preserve and enforce order in its immediate presence. (2) To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority. (3) To provide for the orderly conduct of proceedings before it or its officers. (4) To compel obedience to its judgments, decrees, orders and process, and to the orders of a judge out of court, in an action, suit or proceeding pending therein. (5) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto. (6) To compel the attendance of persons to testify in an action, suit or proceeding therein, in the cases and manner provided by law. (7) To administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties."

94 n.4. It is well settled that jurors, even prospective jurors, are sworn officers of the court. State v. Vega, 144 Wn. App. 914, 917, 184 P.3d 677 (2008); State v. Cuzick, 11 Wn. App. 539, 544, 524 P.2d 457 (1974). Thus, they are not general members of the public. Vega, 144 Wn. App. at 917. We conclude the trial court acted well within its considerable discretion to manage courtroom proceedings in excluding potential jurors during preemptory challenges, for the reasons articulated by the trial court. There was no error.

Affirmed.

Spearman, A.C.J.

WE CONCUR:

Dwyer, J.

Schindler, J.