

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

RICHARD WAYNE BLAIR,

Appellant.

No. 41250-1-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury entered a verdict finding Richard Blair guilty of third degree assault. On appeal, Blair contends that sufficient evidence does not support his conviction. Specifically, Blair contends that the State did not present evidence sufficient to prove to a jury beyond a reasonable doubt that he caused the victim’s injury and that he acted with criminal negligence. Because sufficient evidence supports Blair’s conviction, we affirm.

FACTS

On November 13, 2009, Blair was staying at a homeless encampment in Pierce County, Washington. That evening, Blair drank high alcohol beer¹ with several camp residents, including Anthony Trapani, Kelly Weigman, Trapani’s girlfriend, and Melvin Harding. Blair and Trapani

¹ The beers consumed were Four Loko with 13.9 percent alcohol and 211 Steel Reserve with 8.1 percent alcohol.

began arguing. Weigman got in the middle of the argument and was hit in the face and kicked in the ribs.² Weigman and Trapani walked to a restaurant nearby to call for medical aid while Blair followed closely behind.

When the three arrived at the restaurant, they pounded on the door to get the attention of the cleaning crew inside. The cleaning crew, Roger Bellarin and Cynthia Bellarin, did not let them inside but agreed to call 911. Roger Bellerin also agreed to provide water for Weigman and said that he would leave it outside at the back of the restaurant. Trapani and Blair walked to the back of the restaurant while Weigman waited in front. Blair returned without Trapani and asked Weigman to leave with him but Weigman stayed.

Blair left the restaurant as the paramedics were arriving. When the paramedics arrived, Weigman and Cynthia Bellerin walked around to the side of the restaurant and found Trapani lying motionless in a pool of blood. The paramedic who treated Trapani observed that he had clotting at the back of his head and swelling around his jaw. Trapani suffered an epidural hematoma and was in a coma for about a month as a result of his injury.

When interviewed that night, Weigman told police officers that a stranger had attacked her and Trapani. After realizing the seriousness of Trapani's injuries, she told police that Blair was involved in a fight with Trapani. Weigman took detectives to the homeless camp to identify Blair. When detectives detained Blair, one of the detectives noticed dried blood on his coat and shoes. Deoxyribonucleic acid (DNA) testing determined that the blood on Blair's clothing was Trapani's.

² Although Weigman testified that the fight was verbal, she said that she was hit. The record is unclear as to who hit her.

The State charged Blair with second degree assault. RCW 9A.36.021(1)(a). The State later amended the information to include an aggravator that the victim's injuries substantially exceeded the level of bodily harm necessary to satisfy the elements of the offense. RCW 9.94A.535(3)(y).

A jury trial began on August 17, 2010. At trial, Harding testified that he spoke with Blair the morning after Trapani was injured and that Blair told him that Trapani "got smart with him so he cold-cocked him in the jaw." 5-B Report of Proceedings (RP) at 233. Blair testified that he never told Harding that he hit Trapani. He said that when he and Trapani walked to the back of the restaurant, they returned together to give the water to Weigman. He also testified that when he left the restaurant, Weigman and Trapani walked around to the side of the building. Blair further testified that he thought either Weigman pushed Trapani, or that Trapani "passed out, slipped and fell." 7 RP at 382. Trapani testified that he could not remember what happened to him or anything about November 13, 2009.

A jury entered a verdict finding Blair guilty of the lesser included offense of third degree assault. The trial court sentenced Blair to the statutory maximum sentence of 60 months based on his offender score of 9+. Blair timely appeals.

ANALYSIS

Blair contends that sufficient evidence does not support his third degree assault conviction. Specifically, Blair contends that the State failed to present sufficient evidence that he (1) caused bodily harm to Trapani and that he (2) acted with criminal negligence. We disagree.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the verdict, it permits any rational trier of fact to find the essential elements of the crime beyond a

reasonable doubt. *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010). A claim of sufficiency admits the truth of the State's evidence and all reasonable inferences that a trier of fact can draw from the evidence. *Kintz*, 169 Wn.2d at 551. Circumstantial evidence and direct evidence are equally reliable. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004); *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

To convict Blair of third degree assault, the State had to prove beyond a reasonable doubt that (1) while acting with criminal negligence, he (2) caused bodily harm (accompanied by substantial pain that extended for a period sufficient to cause considerable suffering). RCW 9A.36.031(1)(f). On appeal, Blair does not challenge that Trapani suffered bodily harm sufficient to meet the statutory requirements for third degree assault.

Bodily Harm

Blair first contends that the State did not present any evidence that he was the one who caused bodily harm to Trapani. Specifically, Blair argues that (1) even if the jury believed Harding's testimony that he "cold-cocked" Trapani, he never told Harding that he *caused* Trapani's head injury and, (2) because there is no evidence in the record to show *when* Trapani suffered the actual injury to his head, Trapani may have suffered the injury before arriving at the restaurant, but collapsed when left alone at the side of the building. We disagree.

Here, the State presented sufficient evidence that Blair caused bodily harm to Trapani. Weigman and Roger and Cynthia Bellerin testified that Blair and Trapani walked to the back of the restaurant together but that only Blair returned. Weigman also testified that when she found Trapani on the side of the restaurant, he was unconscious and lying in a pool of blood. Additionally, DNA testing showed that Blair's clothing contained Trapani's blood. Further,

Harding testified that Blair told him that he “cold-cocked” Trapani in the jaw because Trapani had “got smart with him.” 5-B RP at 233. This is sufficient evidence from which any reasonable juror could infer that when Blair and Trapani walked to the back of the restaurant, Blair punched Trapani, which knocked him to the ground and caused bodily harm.

Criminal Negligence

Next, Blair contends that the State failed to present sufficient evidence that he acted with criminal negligence. Blair specifically argues that Harding’s testimony that he “cold-cocked” Trapani does not prove that he acted with criminal negligence because a reasonable person would not know that one punch to the jaw would cause “bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering.” Br. of Appellant at 7.

Under RCW 9A.08.010(1)(d), a person acts with criminal negligence when he or she “*fails to be aware of* a substantial risk that a wrongful act may occur and his or her failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.” (Emphasis added.) Additionally, RCW 9A.08.010(2) states,

When a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly.

A person acts recklessly when he or she “*knows of and disregards* a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.” RCW 9A.08.010(1)(c) (emphasis added). Whether an act is reckless depends on both what the defendant knew and how a reasonable person would have acted knowing these facts. *State v. R.H.S.*, 94 Wn. App. 844,

No. 41250-1-II

847, 974 P.2d 1253 (1999). The trier of fact is permitted to find actual subjective knowledge if

there is sufficient information that would lead a reasonable person to believe that a fact exists. *R.H.S.*, 94 Wn. App. at 847.

Here, the State presented sufficient evidence that Blair acted with criminal negligence. The State was required to prove only that Blair *failed to be aware* of a substantial risk that a wrongful act could occur. Thus, any reasonable juror could have found that Blair failed to be aware of the substantial risk that punching Trapani in the jaw could cause bodily harm, and that his actions constituted a gross deviation from a reasonable person because a reasonable person would not have punched another person in the face or left him unconscious on the ground.

Moreover, sufficient evidence proves that Blair acted recklessly and, under RCW 9A.08.010(2), recklessness is a substitute for criminal negligence. Contrary to Blair's contention, a reasonable person would *know* that punching someone in the jaw creates a substantial risk of causing bodily harm. Division One of this court has said that "any reasonable person knows that punching someone in the face could result in a broken jaw, nose, or teeth, each of which would constitute substantial bodily harm." *R.H.S.*, 94 Wn. App. at 847 (holding that sufficient evidence supported the defendant's second degree assault conviction). Likewise, any reasonable person knows that punching someone in the face could result in "substantial pain that extends for a period sufficient to cause considerable suffering." RCW 9A.36.031(1)(f). Therefore, any reasonable juror could have found that Blair *knew of and disregarded* the substantial risk that punching Trapani in the jaw could cause bodily harm.

No. 41250-1-II

Accordingly, the State presented sufficient evidence to support Blair's conviction for third degree assault and 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 in accordance with RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, J.

PENoyer, C.J.