

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

A.R.P.D.,

Appellant.

No. 41594-1-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Following a bench trial, the trial court found A.R.P.D., a juvenile, guilty of second degree assault with a deadly weapon. RCW 9A.36.021(1)(c). A.R.P.D. appeals, arguing that the evidence is insufficient to show that the stick he used during the assault was a deadly weapon. Viewing the evidence in the light most favorable to the State, the evidence is sufficient to support the juvenile court’s adjudication as a matter of law. We affirm.

FACTS

In August 2010, A.R.P.D. and four other young men, Ryan Strain, Bradley List, Joshua Feaser, and Julian Castellanos, attacked Cameron Holderied in an abandoned house in Battle Ground, Washington. The five young men carried out the attack after Strain told them that Holderied owed Strain money. Castellanos lured Holderied to the abandoned house under the guise of a drug buy. While Castellanos waited outside for Holderied to arrive, A.R.P.D. and the

three other young men, including Strain, hid in a back room of the house. When Holderied arrived, accompanied by his girlfriend, Rebecca Roberson, Castellanos convinced them to go into the house to complete the transaction.

Holderied testified that once inside, Castellanos ran out the back door, yelling, “Do it. Do it.” Report of Proceedings (RP) (Nov. 24, 2010) at 57. At that point, A.R.P.D. and the other young men came out of the back room and started beating Holderied with two-by-fours and large sticks.¹ At one point during the attack, Strain held Holderied down while the others beat him on the head with the sticks and boards. After being beaten for about a minute and a half, Holderied was able to crawl out of the house and call 911. On his way out of the house, Holderied grabbed his wallet and noticed that it was missing money. When police arrived, the four young men who participated in the beating ran from the house. Police apprehended them a short time later. As a result of the attack, Holderied suffered a large gash on his head that required staples to repair.

Based on the above incident, the State charged A.R.P.D., then 17 years and 11 months old, with second degree assault, RCW 9A.36.021(1)(c), and second degree robbery, RCW 9A.56.210(1) and .190. In juvenile court, A.R.P.D. testified that he did not take part in the assault. A.R.P.D. explained that when Holderied entered the house, he (A.R.P.D.) went to another corner of the house to urinate. Roberson testified that she specifically saw A.R.P.D. hit Holderied, but acknowledged that A.R.P.D. was the least involved in the attack. She said that the young men hit Holderied between 30 and 45 times, and estimated that A.R.P.D. issued between 2 and 4 of those blows. List testified that A.R.P.D. was standing behind the others during the

¹ List testified that the sticks were three inches wide and four feet long. Roberson testified that the sticks were the size of two broom handles bound together.

attack. The State did not admit into evidence any of the sticks or boards used during the attack.

The juvenile court entered written findings of fact and conclusions of law. Specifically, the court found that all four of the young men, including A.R.P.D., participated in beating Holderied in the head with sticks and found that the sticks and two-by-fours were “clearly deadly weapons as a result of the incident there.” RP (Nov. 24, 2010) at 192. The juvenile court then entered an adjudication of guilt against A.R.P.D. for assault with a deadly weapon. The court did not find A.R.P.D. guilty of second degree robbery. The juvenile court committed A.R.P.D. to the Department of Social and Health Services, Division of Juvenile Rehabilitation for 15 to 36 weeks. A.R.P.D. timely appeals.

ANALYSIS

A.R.P.D. challenges the sufficiency of the evidence supporting his second degree assault adjudication, arguing that the State failed to prove that he assaulted the victim with a deadly weapon. Specifically, A.R.P.D. contends that the evidence failed to show that his stick was readily capable of causing death or substantial bodily harm under the circumstances in which it was used because (1) the stick was not admitted in evidence and its exact size and characteristics were unknown to the court and (2) although A.R.P.D. hit the victim two to four times, there was no evidence he caused any specific injuries or that he could have caused injuries from his position in relation to the victim and others in the room. The State responds that even if the prosecution failed to prove that A.R.P.D.’s stick was a deadly weapon, A.R.P.D.’s arguments are

irrelevant if sufficient evidence proves that *any one of his accomplices* used a deadly weapon.² In addition, the State argues that sufficient evidence proves that A.R.P.D. and his accomplices used deadly weapons to assault the victim because the State submitted evidence that the group used two-by-fours and large sticks to beat the victim and that the victim suffered a gash on his head requiring stitches. We hold that sufficient evidence supports A.R.P.D.'s second degree assault adjudication.

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, which should be interpreted most strongly against the defendant. *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). Credibility determinations are for the trier of fact and are not subject to review. *Thomas*, 150 Wn.2d at 874; *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *Thomas*, 150 Wn.2d at 874-75; *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

In order to prove that Day committed the crime of second degree assault, the State was

² A.R.P.D. does not challenge the trial court's finding that he was guilty of second degree assault both as a principal and as an accomplice. Unchallenged findings become verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003) (citing *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994)).

required to prove that Day assaulted the victim “with a deadly weapon.” RCW 9A.36.021(1)(c).

RCW 9A.04.110(6) defines a “deadly weapon” as

any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a “vehicle” as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.

RCW 9A.04.110(6) distinguishes between deadly weapons “per se” (firearms and explosives) and deadly weapons “in fact” (other weapons). *In re Pers. Restraint of Martinez*, 171 Wn.2d 354, 365, 256 P.3d 277 (2011). Because the wooden weapons used in this case do not fall within the narrow scope for deadly weapons per se, their status rests on the circumstances in which they were used. RCW 9A.04.110(6); *In re Martinez*, 171 Wn.2d at 365. This court has articulated that the circumstances to consider when determining whether an object is a deadly weapon include “the intent and present ability of the user, the degree of force, the part of the body to which it was applied and the physical injuries inflicted.” *State v. Skenandore*, 99 Wn. App. 494, 499, 994 P.2d 291 (2000) (quoting *State v. Sorenson*, 6 Wn. App. 269, 273, 492 P.2d 233 (1972)).

A.R.P.D. relies on this court’s holding in *Skenandore* for his argument that the evidence is insufficient to support a finding that his stick constituted a deadly weapon under the circumstances. But *Skenandore* is distinguishable and A.R.P.D.’s reliance is misplaced. In *Skenandore*, the defendant challenged his conviction of second degree assault for striking a corrections officer with a spear made out of rolled up writing paper bound with dental floss and affixed to a golf pencil. 99 Wn. App. at 496. The blows left non-abraded red indentations on the officer’s chest that faded within hours of the assault. *Skenandore*, 99 Wn. App. at 500. In that

case, this court determined that the evidence failed to show the spear's ready capability to cause substantial bodily harm where all three blows landed on the officer's torso, well below his head, the cell door restricted the spear's movement, and the spear did not tear the officer's shirt or break the skin. *Skenandore*, 99 Wn. App. at 500. In addition, this court noted that the jury was unable to examine the spear in its completely assembled state to determine its deadly weapon capability because Skenandore had partially disassembled it and flushed the pencil point down his cell toilet. *Skenandore*, 99 Wn. App. at 500. This court reversed Skenandore's second degree assault conviction, holding that the surrounding circumstances inhibited the spear's ready capability to inflict substantial bodily harm. *Skenandore*, 99 Wn. App. at 501.

A.R.P.D. mistakenly analogizes the defendant's spear in *Skenandore* to his stick in the present case. As the State correctly points out, A.R.P.D.'s arguments ignore the fact that the trial court found him guilty as both a principal and as an accomplice. Under Washington's accomplice liability statute, an "accomplice" is liable for the criminal conduct of the person actually committing the crime. RCW 9A.08.020. Thus, as the State argues, even if the State failed to prove that *his* stick was a deadly weapon, the evidence was sufficient to prove that *any one of his accomplices* used a deadly weapon. In this case, the State presented evidence that A.R.P.D. and his accomplices beat Holderied in the head with two-by-fours and sticks that were approximately the size of two broom handles bound together. In addition, unlike in *Skenandore* in which the State presented evidence that the victim suffered only red indentations on his chest, here the State presented evidence that the victim suffered a laceration on his head that required staples to repair. The evidence shows A.R.P.D. knowingly assisted others in assaulting Holderied. The fact that A.R.P.D. may not have inflicted the actual blow which caused the laceration is irrelevant because

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he is liable for the criminal conduct of his accomplices.

In considering the degree of force, the part of the body to which it was applied, and the physical injuries inflicted, any rational trier of fact could find that the two-by-fours and large sticks were readily capable of causing death or substantial bodily harm in the circumstances in which they were used. Therefore, we hold that sufficient evidence supports the juvenile court's finding that A.R.P.D. committed assault with a deadly weapon.

Accordingly, we affirm A.R.P.D.'s second degree assault adjudication.

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, P.J.

JOHANSON, J.