COURT OF APPEALS
DECISION
DATED AND FILED

February 8, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP697-CR **Cir. Ct. No. 2003CF239**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LINDA J. DANCER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County: BRUCE E. SCHROEDER, Judge. *Affirmed*.

Before Snyder, P.J., Brown and Anderson, JJ.

¶1 PER CURIAM. Linda J. Dancer appeals a judgment of conviction of first-degree intentional homicide as a party to the crime. She argues that the lesser included offenses of homicide by reckless conduct should have been submitted to the jury. We disagree and affirm the judgment.

¶2 On April 12, 1990, Dancer and husband, Gaylord Gomaz, went to the home of Connie Reyes, a social worker in the Kenosha County Division of Children and Family Services. The pair was angry that Dancer's visitation with her children that day had been cancelled. Knowing that Reyes would not answer the door if she saw them, they sent Chester Gulan to the door to gain entry to Reyes's home. During the angry confrontation of Reyes, Gomaz grabbed Reyes by the throat and strangled her to death. Reyes body was discovered two days later. Not until thirteen years later did information come to light of how Reyes was killed when, on March 10, 2003, Gulan confessed to having witnessed the homicide.

¶3 Gomaz entered a guilty plea to first-degree intentional homicide as a party to the crime. He testified at Dancer's trial that after learning that her visitation was cancelled, Dancer indicated she wanted to have Reyes killed. He said it was Dancer's idea to follow Reyes home and to get revenge on her. He admitted that he strangled Reyes. According to Gomaz, Dancer encouraged Gulan and Gomaz to sexually assault Reyes after the killing. Dancer also went to a friend to ask the friend to create an alibi for herself and Gomaz.

¶4 Dancer requested jury instructions on the lesser included offenses of first-degree reckless homicide and second-degree reckless homicide. *See* ***State v. Barreau***, 2002 WI App 198, ¶17, 257 Wis. 2d 203, 651 N.W.2d 12 (no dispute that reckless homicide is a lesser included offense of intentional homicide). Her request was based on one of several contradictory statements Gomaz gave to police. In one statement Gomaz indicated that he was trying to get Dancer to back off Reyes and when he grabbed Reyes by the neck, he thought he had Dancer. He also stated that he had Reyes by the neck for only a brief period before she passed out.

¶5 Whether the evidence required an instruction on a lesser included offense is a question of law that we review de novo. ***Id.*** The test is

> whether under the evidence presented at trial, there were reasonable grounds for both acquittal on first-degree intentional homicide and conviction on first-degree reckless homicide. In other words, if a reasonable view of the evidence both casts reasonable doubt on the first-degree intentional homicide charge and supports a guilty verdict for first-degree reckless homicide, then we must conclude that the circuit court erred in declining to submit jury instructions on both offenses. In making this determination, we view the evidence in the light most favorable to the defendant.

Id. (citations and emphasis omitted).[1]

¶6 Here Dancer was tried under the party to a crime statute, WIS. STAT. § 939.05 (2003-04).[2] A defendant is liable under the party to a crime theory if he or she aids and abets the commission of the crime. An aider and abettor is someone who knows or believes that another person is committing, or intends to commit, a crime and knowingly either renders aid to that person or stands by, ready and willing to render aid if needed, and the person who directly commits the crime knows of his or her willingness to help. *See* ***State v. Sharlow***, 110 Wis. 2d 226, 238-39, 327 N.W.2d 692 (1983).

¶7 Dancer's theory of defense was that she had no idea that Gomaz intended to kill Reyes when they entered the house for the purpose of committing

[1] The circuit court stated that the test is whether a reasonable jury could find the evidence supports conviction on the lesser included offense and acquittal on the greater. Although the circuit court's ruling relies on the wrong standard, we may affirm on different grounds. ***State v. Sharp***, 180 Wis. 2d 640, 650, 511 N.W.2d 316 (Ct. App. 1993).

[2] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

an assault. The only reasonable view of the evidence was that they intended the assault and the murder was a natural and probable consequence of the assault. As a matter of law, one who intentionally aids and abets the commission of a crime is responsible for the intended crime and any other crime that is committed as a natural and probable consequence of the criminal act. ***State v. Ivy***, 119 Wis. 2d 591, 598, 350 N.W.2d 622 (1984). Had the jury found that Dancer was a mere bystander to Gomaz's rage, it was a basis for acquittal and would not have supported a finding that she was guilty of reckless homicide.

¶8 There is no reasonable view of the evidence that Gomaz did not intend to kill Reyes. He had her by the throat and was exerting force. The actor's intent to kill may be inferred from the nature of the conduct. *See* ***State v. Webster***, 196 Wis. 2d 308, 321, 538 N.W.2d 810 (Ct. App. 1995) (intent may be inferred from a defendant's conduct). We affirm the circuit court's refusal to give the lesser included offense instructions.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.