COURT OF APPEALS
DECISION
DATED AND FILED

September 22, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2534-CR **Cir. Ct. No. 2013CF4222**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GLEN ARTHEUS BEAL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MEL FLANAGAN, Judge. *Affirmed*.

Before Kessler, Brennan and Bradley, JJ.

¶1 KESSLER, J. Glen Artheus Beal appeals a judgment of conviction, following a jury trial, convicting him of physical abuse of a child, as a party to a crime, repeater, and disorderly conduct. Beal was convicted of intentionally causing harm, as party to a crime, to J.G., the daughter of his girlfriend. Beal

asserts that the trial court committed reversible error when it prohibited him from presenting a defense based on his girlfriend's right to discipline her child. We affirm.

BACKGROUND

¶2 According to the criminal complaint, on September 8, 2013, Milwaukee police were dispatched to a home, in response to an allegation of child abuse. Upon arrival, police noticed that the victim, J.G., had a swollen face, a bruised and swollen eye, scratches on her face, swollen and bloody lips, and scratches and bruises on her neck. J.G. told police that she was at a friend's home, two houses down, when she heard a knock on the door. She opened the door to find an angry Beal, who grabbed her shirt collar and dragged her outside of the home. Aretha Strong, J.G.'s mother, was waiting outside of the home. Strong began to yell at J.G. for not coming home, and then punched J.G. multiple times while Beal restrained J.G. J.G. told police that Beal punched her as well. Beal then physically placed J.G. in the backseat of his car and drove her home, while Strong continued to punch and slap J.G. in the backseat. Once home, J.G. ran to another friend's house, where the friend's mother called the police. Multiple witnesses confirmed to police that Beal and Strong punched J.G. multiple times. The criminal complaint charged Strong with one count of physical abuse of a child and disorderly conduct, and Beal with one count of physical abuse of a child, as a party to a crime, repeater, and disorderly conduct. Beal and Strong were tried separately.

¶3 Prior to trial, the State filed a motion *in limine* to prohibit Beal from asserting a reasonable discipline defense at trial. Beal's defense counsel conceded that Beal did not "enjoy the privilege," but stated that the jury should be aware that

Strong did. The trial court disagreed, stating that Beal is a "nonparent" and does not have "contact privileges because he was with the mother of the child."

¶4 The matter proceeded to trial where multiple witnesses, including J.G., testified. J.G. testified that on the night of September 8, 2013, she was at her friend G.P.'s house. J.G. noticed her mother's truck pull up outside of G.P.'s house and saw her mother go to the back of the house, while Beal came to the front. When J.G. answered the door she said "[Beal] jack [her] up." She testified that Beal grabbed her by the shirt, which ripped off of her body, and then dragged her to her mother's car. Her mother then came to the front of the house and began "fighting." J.G. said that her mother began to punch her, while Beal "grabbed [her] by [the] arms and pinned [her] to the ground." She testified that Beal also punched her in the back of the head, hitting her approximately five to ten times. J.G. testified that she noticed a crowd of people gathering on the street outside of the home, yelling for Strong and Beal to stop. J.G. said that Beal eventually dragged her to the back of her mother's car and instructed Strong to sit in the back with J.G. and to "beat [J.G.] up." J.G. said that while in the back of the car, Strong pinned J.G. to the floor of the car and began punching her again. Strong also kicked J.G. in the lip. J.G. said that when she arrived home, Beal attempted to grab her by the arm, but J.G. was able to break free and run to another friend's home.

¶5 G.P. testified that on the day in question, J.G. was at her home when Beal "came knocked on the [door] and axed for [J.G.]." G.P. testified that J.G.'s "mamma and her mamma boyfriend … [were] [b]eating her up. Fighting her." (Some formatting altered.) She said that both Beal and Strong punched J.G. multiple times and then "threw [J.G.] in the car." G.P. did not see what happened once J.G. was in the car.

¶6 S.S., G.P.'s older cousin, was also at G.P.'s home on the night of September 8, 2013. S.S. told the jury that she heard "yelling," prompting her to "[run] out the front door to see what was going on." S.S. then saw Beal and Strong hitting J.G. Specifically, S.S. said that she saw Strong first hit J.G. with an open hand, then hit J.G. repeatedly while Beal held J.G. down. S.S. also witnessed Beal punch J.G. in the face. S.S. testified that she told Strong to stop hitting her daughter, at which point Strong said, "this my child, you can't tell me … what to do with my own child." S.S. said that both Beal and Strong "picked [J.G.] up and carried her" to the car, where they then "threw" J.G. in the back seat. S.S. called the police.

¶7 Strong also testified, telling the jury that when she returned home from work, after 10:00 p.m. on September 8, 2013, J.G. was not home, though she was supposed to be. Strong testified that she knew where J.G. was because "this is the house that she always run to when she runs away." Strong said that she and Beal went to G.P.'s home, where she went to the back door and Beal went to the front door to look for J.G. When Beal found J.G., he yelled for Strong to come to the front of the house, where Strong found Beal "holding [J.G.] … because she will run. And I told him to hold her for me so we could get her in the car. She didn't supposed to be at this house." Strong said that J.G. was holding a purse, which contained a can of corn and a box cutter, and began swinging the purse to try to hit Strong. Strong said that J.G. was "swinging it at me telling me she finna beat this B," meaning "beat this bitch, talking about [Strong]." Strong said Beal held down the hand J.G. was holding the purse with, in an attempt to prevent J.G. from hitting Strong. Strong admitted to "slapping [J.G.] across the head, because I couldn't believe she was trying to hit me with a can of corn." Strong testified that she got J.G. in the car with difficulty because J.G. was kicking and punching

Strong, prompting Strong to hold J.G. down in the car. Strong said that Beal never punched or hit J.G.

¶8 The jury found Beal guilty of each charge. This appeal follows.

DISCUSSION

¶9 On appeal Beal contends that his due process rights were violated when he was prohibited from presenting a defense based on Strong's privilege to reasonably discipline her child. Specifically, he argues that he was prevented from presenting a defense that "he did not directly commit the crime of child abuse and he did not aid Strong in committing the crime of child abuse because her actions were not a crime insomuch as she was entitled to the 'reasonable discipline privilege.'" We disagree.

¶10 The due process clause of the Fourteenth Amendment to the United States Constitution requires that criminal defendants be afforded "'a meaningful opportunity to present a complete defense.'" ***Crane v. Kentucky***, 476 U.S. 683, 690 (1986) (citation omitted). The right is not absolute. *See* ***id.*** at 689-90. The decision of whether to admit or exclude evidence is left to the trial court's sound discretion. ***State v. Hunt***, 2003 WI 81, ¶34, 263 Wis. 2d 1, 666 N.W.2d 771.

Even if Strong is entitled to a privilege, Beal can still be convicted of child abuse as a party to a crime.[1]

¶11 Beal contends that he could not have been a party to a crime because, based on Strong's privilege, there was no crime. Thus, this case implicates two sets of statutes: WISCONSIN STAT. § 939.05 (2013-14),[2] defining "parties to crime," and WIS. STAT. § 939.45, describing the parental discipline privilege.

¶12 WISCONSIN STAT. § 939.05 provides:

> **(1)** Whoever is concerned in the commission of a crime is a principal and may be charged with and convicted of the commission of the crime *although the person did not directly commit it and although the person who directly committed it has not been convicted* or has been convicted of some other degree of the crime or of some other crime based on the same act.
>
> **(2)** A person is concerned in the commission of the crime if the person:
>
> (a) Directly commits the crime; or
>
> (b) Intentionally aids and abets the commission of it; or
>
> (c) Is a party to a conspiracy with another to commit it or advises, hires, counsels or otherwise procures another to commit it. Such a party is also concerned in the commission of any other crime which is committed in pursuance of the intended crime and which under the circumstances is a natural and probable consequence of the intended crime. This paragraph does not apply to a person

[1] The State argues that Beal forfeited a claim that he should have been able to assert the reasonable discipline privilege because Beal did not raise that argument with the trial court. Beal is not arguing that he should have been able to assert the privilege. Rather, Beal argues that the jury should have been made aware of *Strong's* privilege. Accordingly, we do not address the State's argument further.

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

> who voluntarily changes his or her mind and no longer desires that the crime be committed and notifies the other parties concerned of his or her withdrawal within a reasonable time before the commission of the crime so as to allow the others also to withdraw.

(Emphasis added.)

¶13 The statute governing the parental discipline privilege, WIS. STAT. § 939.45(5), states that a person responsible for the welfare of a child, such as a parent, enjoys a privilege to reasonably discipline the child by use of physical force. Section 939.45(5)(b) provides that a parent's conduct is privileged:

> When the actor's conduct is reasonable discipline of a child by a person responsible for the child's welfare. Reasonable discipline may involve only such force as a reasonable person believes is necessary. It is never reasonable discipline to use force which is intended to cause great bodily harm or death or creates an unreasonable risk of great bodily harm or death.

This privilege constitutes an affirmative defense to a criminal charge of physical abuse of a child under WIS. STAT. § 948.03. *See* § 939.45 ("The fact that the actor's conduct is privileged, although otherwise criminal, is a defense to prosecution for any crime based on that conduct.").

¶14 Beal concedes that he is not directly entitled to the parental discipline privilege, but contends that he should have been able to assert a defense based on Strong's right to reasonably discipline J.G. We disagree. WISCONSIN STAT. § 939.05(2)(a) states that a person may be convicted of being a party to a crime if that person "[d]irectly commits the crime." Multiple witnesses testified that Beal punched J.G. himself. J.G. testified that Beal punched her in the head approximately five to ten times. J.G.'s testimony was corroborated by G.P., who stated that Beal hit J.G. multiple times. S.S. stated that she witnessed Beal punch

J.G. in the face. Therefore, there was sufficient evidence for the jury to conclude that Beal directly committed the crime of child abuse.

¶15 WISCONSIN STAT. § 939.05(2)(b) states that a person may be convicted of being a party to a crime if that person "[i]ntentionally aids and abets the commission of [that crime]." An aider and abettor may be convicted as a party to a crime even though the principal was not convicted or even identified. ***State v. Shears***, 68 Wis. 2d 217, 240, 229 N.W.2d 103 (1975). That Strong may have had a parental discipline privilege is therefore irrelevant. The State was not required to prove that Strong committed a crime for Beal to be convicted. Indeed, it was not even necessary for the State to charge Strong before it could charge and convict Beal. *See* § 939.05(1). The evidence adduced at trial supports the jury's conclusion that Beal aided and abetted in committing child abuse and also supports the conclusion that Beal personally committed child abuse. J.G., G.P. and S.S. all testified that Beal held J.G. down while Strong repeatedly punched J.G. and then threw J.G. into a car. J.G. testified that Beal instructed Strong to "beat [J.G.] up" in the car and drove while Strong continued to hit and kick J.G. Strong's actions, though they may have been privileged, were still criminal. Accordingly, the trial court properly exercised its discretion when it found Strong's affirmative defense irrelevant to Beal's case.[3]

[3] Beal relies on an unpublished opinion of this court, ***State v. Caminiti***, case No. 2013AP730-CR, unpublished slip op. (WI App March 20, 2014), to support his argument. Beal's reliance is misplaced. In that case, Philip Caminiti, a preacher at a small community church, was convicted of eight counts of child abuse, as a party to a crime. ***Id.***, ¶1. The charges against Caminiti stemmed from a sermon, in which he encouraged parents to strike children, as young as two to three months, with wooden spoons. ***Id.*** Caminiti's defense, in part, was based on the parental discipline privilege. ***Id.***, ¶5. Beal argues that we "acknowledged that there was no dispute that the defendant could assert defenses based on the parents' constitutional rights and on the reasonable discipline privilege." Beal ignores the fact that the parties in ***Caminiti*** agreed that Caminiti could assert the privilege and that our opinion did not focus on whether Caminiti was entitled to do so. ***Id.***, ¶35. We do not consider the holdings persuasive here in light of the facts in ***Caminiti***.

¶16 For the foregoing reasons, we affirm.

By the Court.—Judgment affirmed.

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