COURT OF APPEALS
DECISION
DATED AND FILED

November 24, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1918-CR **Cir. Ct. No. 2012CF4415**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMMIE LEWIS YERKS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: ELLEN R. BROSTROM, Judge. *Affirmed*.

Before Curley, P.J., Brennan, J., and Daniel L. LaRocque, Reserve Judge.

¶1 PER CURIAM. Jammie Lewis Yerks appeals from a judgment of conviction, entered upon a jury's verdict, on one count of first-degree intentional

homicide as party to a crime. Yerks claims there was insufficient evidence to support the jury's verdict. We affirm.

¶2 On August 18, 2012, fourteen-year-old Kaleel Buchanan shot and killed Dennis Smith, Jr. Yerks was charged with first-degree intentional homicide, as party to a crime, by use of a dangerous weapon, because he had allegedly aided and abetted Buchanan by providing him with the gun. The matter was tried to a jury, which convicted Yerks of first-degree intentional homicide as party to a crime.[1] Yerks was sentenced to life imprisonment with eligibility for extended supervision after twenty-seven years.

¶3 On appeal, Yerks primarily asserts that the State failed to adequately show he had aided and abetted a first-degree intentional homicide because it failed to show that he had any knowledge Buchanan was committing or intending to commit a crime: specifically, that "[t]here is no evidence in this record that Yerks was aware of what Buchanan planned to do with the gun once he had possession." Yerks also argues his actions were consistent with an innocent purpose, such as giving Buchanan the gun for self-defense; that he was just a bystander or spectator; and that it was not wholly clear how Buchanan had gotten the gun because of inconsistencies in witness testimony.

¶4 When reviewing whether there was sufficient evidence to support a jury's verdict, this court "may not substitute its judgment for that of the trier of

[1] The record indicates that the State withdrew the dangerous-weapon penalty enhancer, and the question of a dangerous weapon was not submitted to the jury. There is, therefore, a scrivener's error to the judgment of conviction, which still includes the WIS. STAT. § 939.63(1)(b) dangerous-weapon enhancer in the description of the charge of conviction. We direct that the error be corrected upon remittitur. *See* ***State v. Prihoda***, 2000 WI 123, ¶¶26-27, 239 Wis. 2d 244, 618 N.W.2d 857.

fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). This standard applies whether the evidence is direct or circumstantial. *See* ***id.*** at 503. "Our review of a sufficiency of the evidence claim is therefore very narrow." ***State v. Hayes***, 2004 WI 80, ¶57, 273 Wis. 2d 1, 681 N.W.2d 203. This court "will uphold the conviction if there is any reasonable hypothesis that supports it." ***State v. Smith***, 2012 WI 91, ¶24, 342 Wis. 2d 710, 817 N.W.2d 410.

¶5 A person may be convicted as a party to a crime, even if he did not directly commit the crime, if he intentionally aids and abets its commission. *See* ***State v. Sharlow***, 110 Wis. 2d 226, 238, 327 N.W.2d 692 (1983). A person intentionally aids and abets the commission of a crime when he knowingly either assists the person who commits the crime or is ready and willing to assist and the person who commits the crime knows of that willingness. *See* WIS JI—CRIMINAL 400. "Intent for purposes of establishing liability as an aider and abettor is evidenced by knowledge or belief that a person is committing or intends to commit a criminal act." ***State v. Ivy***, 119 Wis. 2d 591, 606, 350 N.W.2d 622 (1984).

¶6 Here, Yerks does not take issue with whether Buchanan committed a crime. Rather, Yerks asserts that the State failed to prove that he had the requisite intent, as described by ***Ivy***, to aid or abet Buchanan's commission of that crime. Given our narrow standard of review, however, we are satisfied that sufficient evidence supports the jury's verdict.

¶7 The following evidence was presented at trial. Yerks was a father-figure to Buchanan, having been in a relationship with Buchanan's mother for about fifteen years. On the morning of Smith's shooting, Buchanan went to the home of brothers Isiah Jelks and Cornillius Hurt. Smith was outside the house with Jelks, Hurt, and others. Buchanan asked Smith about someone robbing Buchanan's brother. Smith pushed Buchanan, which upset Buchanan. Jelks and Hurt's sister, Quanette Poe, told Smith to stop picking on Buchanan. Smith responded by putting his hand on Poe's face and pushing her away, causing Smith and Hurt to get into a fight. Smith then made a phone call to obtain a gun. Buchanan attempted to call Yerks for a gun as well, but his call did not go through. Buchanan, who lived nearby, left and returned a short time later. Smith was waiving a gun but had put it in his pants and was walking away. At that time, a car pulled up with Yerks in it and he gave Buchanan a gun.[2] Buchanan shot Smith multiple times.[3] Before either could be arrested, Yerks and Buchanan went to Buchanan's brother's home in Menasha.

¶8 Yerks contends that the State failed to prove aiding and abetting because there is no evidence of what, if anything, Buchanan ever said to Yerks. Thus, Yerks claims, there is no evidence that he knew Buchanan was committing or was planning to commit a crime.

¶9 A jury is allowed to make reasonable inferences. *See* ***Poellinger***, 153 Wis. 2d at 506. Buchanan got into an argument with Smith. Smith called for

[2] Although Yerks disputed ever being on the scene, multiple witnesses, including Buchanan's mother, placed Yerks at the scene.

[3] According to the autopsy, Smith had twenty-three gunshot wounds.

a gun. Buchanan tried to call Yerks for a gun, but the call was incomplete, so Buchanan left briefly. It is reasonable to infer that fourteen-year-old Buchanan went home and spoke to Yerks in furtherance of his attempt to obtain a weapon.

¶10 Buchanan then did not stay at home.[4] Instead, he returned to where Smith was, and Yerks was not far behind him with a gun. It is reasonable to infer that Yerks knew of and approved of Buchanan's reason for needing the gun and that such reason was criminal, because it is also reasonable to infer that Yerks would never have given a fourteen-year-old a gun if he did not know of or approve of the reason why Buchanan was requesting a gun.

¶11 Yerks and Buchanan then fled to Menasha. It is reasonable to infer that if Yerks were merely a spectator or bystander, who would incur no criminal liability for a principal's criminal activity, then he would not have gone to Menasha. *See, e.g.*, ***State v. Quiroz***, 2009 WI App 120, ¶18, 320 Wis. 2d 706, 772 N.W.2d 710 ("Analytically, flight is an admission by conduct.").

¶12 While there may be room for other interpretations of the evidence, it is the jury's function, not ours, to resolve conflicts in testimony, draw inferences, and determine whether the evidence presented satisfies it beyond a reasonable doubt that the charged crime was committed. *See* ***State v. Wilson***, 149 Wis. 2d 878, 894, 440 N.W.2d 534 (1989). There is a reasonable hypothesis from the

[4] This is why Yerks' "innocent purpose" argument ultimately fails: Buchanan did not need a gun for self-defense when he had already removed himself from any danger.

evidence presented that supports the guilty verdict and, therefore, we do not overturn that verdict.[5]

By the Court.—Judgment affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

[5] The State had also offered the jury a theory that Buchanan may have intended to commit only second-degree reckless endangerment of safety, but that Yerks could still be found guilty of the homicide as party to a crime because the first-degree homicide was a natural and probable consequence of second-degree reckless endangerment. *See* WIS JI—CRIMINAL 406. Yerks tries to show that first-degree intentional homicide is not a natural and probable consequence of second-degree reckless homicide, and he also reiterates his argument that the State failed to satisfy the elements of aiding and abetting.

We need not discuss this alternate theory because we are satisfied that the evidence supports the main theory that Yerks aided and abetted first-degree intentional homicide. Only dispositive issues need to be addressed. *See* ***State v. Manuel***, 2005 WI 75, ¶25 n.4, 281 Wis. 2d 554, 697 N.W.2d 811.