

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL WAINAINA KARIUKI,

Appellant.

No. 76339-3-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: July 30, 2018

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COURT OF APPEALS
STATE OF WASHINGTON
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ANDRUS, J. — Evidence is sufficient to support a conviction if, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the offense proved beyond a reasonable doubt. Michael Wainaina Kariuki challenges the sufficiency of the evidence supporting his conviction for second degree assault by strangulation. But, viewing the evidence in the light most favorable to the State, a rational juror could have found beyond a reasonable doubt that Kariuki assaulted his victim by strangulation. We affirm.

FACTS

S.R., a 13 year-old girl living with her sister, Brittcole Trent, was in a sexual relationship with Kariuki, a 21 year-old neighbor. On May 11, 2015, S.R. and her friend Tabitha Chamberlain visited Kariuki. When S.R. returned home, she was distraught. She smelled of alcohol and her cheek was red and swollen. S.R. told Trent that Kariuki wanted to have sex with her in front of Chamberlain and, when she said no, he slapped her.

Following an investigation, the State charged Kariuki with two counts of rape of a child in the second degree, assault in the second degree by strangulation, sexual exploitation of a minor, communication with a minor for immoral purposes, and child molestation in the second degree. During a three-week trial, Trent, Chamberlain, and the responding officers testified to the events related above. Professionals who cared for S.R. at the hospital also testified.

A social worker, Janelle Heath, stated that S.R. told her that she had been sexually active with Kariuki on multiple occasions. S.R. told Heath that, on May 11, she and Kariuki had several drinks. Kariuki then wanted to have sex but S.R. said no. S.R. told Heath that Kariuki slapped her, choked her, and pushed her into a dresser. The emergency room physician, Dan Himelic, testified that he observed bruising on the front of S.R.'s neck. S.R. told Himelic that her "significant other" attacked her and choked her. The nurse who conducted the sexual assault exam, Courtney Walker, testified that she observed a bruise on S.R.'s neck near her trachea, as well as other scratches and bruises. Walker stated that bruising is one sign of strangulation.

S.R. did not testify. According to Trent, S.R. was in love with Kariuki and did not testify because she did not want to get him in trouble.

The jury convicted Kariuki of one count of rape of a child and assault in the second degree by strangulation.¹

¹ The jury acquitted Kariuki on the second count of rape of a child and the child molestation charge. The jury was unable to reach a verdict on the remaining charges and a mistrial was declared as to those charges.

neck, near her trachea. The social worker and the emergency room doctor both testified that S.R. reported she had been choked.

Proof of intent can be made through circumstantial evidence. State v. Hagler, 74 Wn. App. 232, 236, 872 P.2d 85 (1994). Intent to commit a crime may be inferred from a defendant's conduct where it is plainly indicated as a matter of logical probability. In re Personal Restraint Petition of Fuamaila, 131 Wn. App. 908, 923 n.23, 924, 131 P.3d 218 (2006) (evidence of intent to murder inferred from victim's multiple stab wounds) (quoting State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997)). Evidence of Intent is gathered from all of the circumstances of the case. State v. Wilson, 125 Wn.2d 212, 217, 883 P.2d 320 (1994). Based on all of the evidence presented to the jury in this case, it could reasonably conclude that the injury on S.R.'s trachea—caused by a force strong enough to cause bruising—was indicative of an intent to obstruct S.R.'s ability to breathe. The jury could reasonably infer that Kariuki injured S.R. with the intent to obstruct S.R.'s breathing.

Kariuki also challenges the admission of S.R.'s hearsay statements to Heath, the social worker. He objects to Heath's testimony that S.R. told her that Kariuki slapped her, choked her, and pushed her into a dresser. Kariuki contends this statement was not within the medical hearsay exception because it attributed fault.

We review the trial court's decision to admit a statement under a hearsay exception for abuse of discretion. State v. Magers, 164 Wn.2d 174, 187, 189 P.3d 126 (2008). The trial court abuses its discretion if its decision is manifestly unreasonable or based upon untenable grounds or reasons. Id. at 181.

Furthermore, even if the trial court erred, the error was harmless. An erroneous decision to admit evidence is grounds for reversal only if, within reasonable probabilities, the error materially affected the outcome of the trial. State v. Tharp, 96 Wn.2d 591, 599, 637 P.2d 961 (1981). In this case, Trent and Chamberlain testified that S.R. was in a relationship with Kariuki, visited him on May 11, and was distraught after the visit. The doctor, nurse, and responding officer each testified that they saw bruises on S.R.'s neck. Photographs of the bruises were admitted into evidence. The doctor testified that S.R. told him that her boyfriend choked and attacked her. The nurse testified that bruising is one sign of strangulation. Given this unchallenged evidence, it is not reasonably probable that the outcome of the trial would have been different if S.R.'s hearsay statement to the social worker had not been admitted.

Affirmed.

Andrew, J.

WE CONCUR:

Mam, ACT

Dwyer, J.

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THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON;

Respondent,

v.

MICHAEL WAINAINA KARIUKI,

Petitioner.

No. 96238-3

ORDER

Court of Appeals

No. 76339-3-I

Department II of the Court, composed of Chief Justice Fairhurst and Justices Madsen, Stephens, González and Yu, considered at its November 27, 2018, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

DATED at Olympia, Washington, this 28th day of November, 2018.

For the Court

Fairhurst, C.J.
CHIEF JUSTICE