

NOT DESIGNATED FOR PUBLICATION

No. 125,445

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

HAROLD JACOB HOOKS JR.,
Appellant.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; MICHAEL A. RUSSELL, judge. Opinion filed May 19, 2023. Affirmed.

Ryan J. Eddinger, of Kansas Appellate Defender Office, for appellant.

Kayla Roehler, deputy district attorney, *Mark A. Dupree Sr.*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before MALONE, P.J., GREEN and ISHERWOOD, JJ.

PER CURIAM: A jury convicted Harold Jacob Hooks Jr. of unintentional but reckless murder in the second degree under K.S.A. 2020 Supp. 21-5403(a)(2). Hooks appeals, arguing that there was insufficient evidence to convict him because there was no evidence he acted recklessly and did not intend to kill the victim. Our Supreme Court has previously rejected a near-identical argument in *State v. Deal*, 293 Kan. 872, 269 P.3d 1282 (2012). In doing so, our Supreme Court stated that the focal point of the inquiry is whether the killing is intentional, not whether a voluntary and deliberate act leads to death. Viewing the evidence produced at trial in the light most favorable to the State, a

reasonable jury could have concluded that Hooks did not intend to kill the victim, even though it appears he intentionally battered her. As a result, we affirm Hooks' conviction for unintentional but reckless second-degree murder.

FACTS

On April 11, 2021, Hooks and his then-girlfriend, Teresa Jones, got into an argument at Jones' apartment. Though the argument started as a verbal altercation, it soon turned physical. Nancy Calvert, who lived in the apartment across the hall from Jones, observed Hooks repeatedly hitting Jones, who was covered in blood. Calvert also saw Hooks drag Jones by the hair and stomp on her head. A short while later, Jones died from her injuries, and the State later charged Hooks with intentional murder in the second degree.

The case proceeded to trial in March 2022, and Calvert testified first. On April 11, 2021, Calvert was in her apartment when she heard some commotion coming from the hallway. She opened her apartment door, looked in the direction of the commotion, and saw Jones sitting in the hallway covered in blood. Calvert also observed Hooks slapping Jones in the back of the head while two other tenants tried to stop Hooks from doing this. Calvert said Jones pleaded for help, but Hooks told her to be quiet. Calvert then went back inside her apartment to retrieve her phone and called the police. When Calvert returned to the hallway, she saw Jones lying on the floor while Hooks dragged Jones by her hair back to her apartment. Hooks then stomped on Jones' head. Shortly afterwards, Hooks ran from the apartment building once he learned police were on their way.

Zachary Brown, a police officer with the Kansas City, Kansas, Police Department (KCKPD), responded to Jones' apartment on April 11, 2021. By the time he arrived, EMS was already on scene administering care to Jones. In the hallway outside of Jones' apartment, Brown saw blood on the floor, sliding handprints of blood along the walls on

both sides of the hallway, and bloody handprints on the hallway railing. Brown also observed Jones lying on the floor with blood on her clothes and face.

Joshua Messick, a sergeant with the KCKPD, was also dispatched to Jones' apartment. When he arrived, he noticed two individuals outside of the apartment building pointing down the street towards another individual. Messick then activated the lights and sirens on his police vehicle before eventually parking it behind the unidentified individual walking away from the apartment building.

After exiting the police vehicle, Messick commanded the individual to stop, turn around, and get on the ground. Messick did so because dispatch told him that the suspect had left the apartment building. The unidentified individual complied with Messick's commands, after which Messick placed the individual in custody and learned that the individual was Hooks. When asked about Hooks' appearance, Messick said Hooks had blood on his hands and clothing, as well as an injury to the back of his head. Shortly afterwards, Messick left Hooks with other police officers and went to Jones' apartment building.

Upon arriving, Messick noticed blood and other fluid on the ground near Jones' apartment. He also spoke with a few of Jones' neighbors to learn more about what had happened. At some point, Messick spoke with the apartment complex manager, who took Messick to the building's security room to review the surveillance footage of the incident. On the video, Messick saw Hooks "repeatedly strike [Jones] with his fists, with his knees, with his foot, and drag her by her hair as she tried to get away back towards the interior of the apartment building." When asked directly about the identity of the man on the video, Messick said the manager positively identified the man as Hooks.

Mark Palmerin, another police officer with the KCKPD, also responded to Jones' apartment. Palmerin worked in the criminal intelligence unit, which assists in

investigations by collecting intelligence on suspects and obtaining surveillance footage at homicide scenes. When Palmerin arrived at Jones' apartment building, he also spoke with the apartment complex manager and accompanied her to the building's security room where all the video equipment was stored. After Palmerin viewed the surveillance footage from the third floor, he extracted it to a USB drive. After discovering he extracted the wrong portion of the surveillance footage, Palmerin returned to the apartment building with another police officer and extracted the correct portion of the surveillance footage. The surveillance footage was also played before the jury.

Alan Martinez, a forensic pathologist and medical examiner, performed the autopsy on Jones. Martinez said Jones had an abrasion on her neck, scattered contusions on various regions of her body, blunt force trauma to her head, and other injuries. Jones also had other underlying health conditions, including obesity, an enlarged heart with mild to moderate coronary artery disease, and a fatty liver. The toxicology report showed that Jones had things in her system, including some medication, cocaine, and methamphetamine. Even so, Martinez concluded that the blunt force trauma to Jones' head caused her death, though he also noted that her underlying health conditions and drug use were contributing factors.

Lucas Pruitt, a detective with the KCKPD, also responded to the scene of the incident on April 11, 2021. When he arrived, Pruitt contacted other detectives and went to the third floor of the apartment building to look for evidence. Pruitt also worked to secure a search warrant of Jones' apartment. After obtaining the warrant, Pruitt directed CSI to collect blood samples from the hallway, take photographs, and collect what appeared to be clumps of hair from the hallway. Pruitt also collected a bra, some cigarette butts, and DNA samples from both Jones and Hooks. Rachel Hunt, a forensic DNA scientist with the Kansas Bureau of Investigation, tested the collected items and testified the clumps of hair contained DNA profiles that were consistent with both Jones and

Hooks. Other blood samples collected from the scene also contained DNA profiles that were consistent with Jones' DNA.

Hooks testified last. He stated that he and Jones had been in a relationship off and on during the previous six years. He testified that he lived with Jones at her apartment when the underlying events took place. On April 11, 2021, Hooks said that he and Jones had been arguing throughout the day about multiple things, including Jones' alleged drug use. Eventually, Hooks said that he "lost control" and committed a "horrible act." He testified that he did not intend to do what he did, but he acknowledged that he did not have a good reason to commit the acts seen on the surveillance footage. When asked whether he tried to assist Jones after hitting her, Hooks said he did not recall what happened or whether he said anything to Jones in the hallway.

During the jury instruction conference, Hooks requested a lesser included instruction of unintentional but reckless murder in the second degree, which the trial court later gave to the jury. At the conclusion of trial, the jury found Hooks guilty of unintentional but reckless second-degree murder in violation of K.S.A. 2020 Supp. 21-5403(a)(2). The trial court later sentenced Hooks to 200 months' imprisonment.

Hooks timely appeals.

ANALYSIS

On appeal, Hooks argues that insufficient evidence existed to convict him of second-degree murder.

"When the sufficiency of the evidence is challenged in a criminal case, we review the evidence in a light most favorable to the State to determine whether a rational factfinder could have found the defendant guilty beyond a reasonable doubt. An appellate

court does not reweigh evidence, resolve conflicts in the evidence, or pass on the credibility of witnesses." *State v. Aguirre*, 313 Kan. 189, 209, 485 P.3d 576 (2021).

"This is a high burden, and only when the testimony is so incredible that no reasonable fact-finder could find guilt beyond a reasonable doubt should we reverse a guilty verdict. [Citations omitted.]" *State v. Meggerson*, 312 Kan. 238, 247, 474 P.3d 761 (2020). Additionally, a verdict may be supported by circumstantial evidence, if such evidence provides a basis for a reasonable inference by the fact-finder regarding the fact in issue. Circumstantial evidence, to be sufficient, need not exclude every other reasonable conclusion. *State v. Colson*, 312 Kan. 739, 750, 480 P.3d 167 (2021). There is also no legal distinction between direct and circumstantial evidence in terms of their respective probative value. *Aguirre*, 313 Kan. at 209.

To support his argument, Hooks contends that all the evidence the State presented showed that he acted intentionally in beating Jones, and neither he nor the State presented evidence he acted unintentionally but recklessly. K.S.A. 2020 Supp. 21-5403(a) states: "Murder in the second degree is the killing of a human being committed: (1) Intentionally; or (2) unintentionally but recklessly under circumstances manifesting extreme indifference to the value of human life."

In *Deal*, our Supreme Court considered an analogous situation. There, Deal and Donald Irvin, the victim, got into an argument regarding Deal's girlfriend. Though Deal's explanation about what occurred changed throughout multiple police interviews, Deal consistently admitted to striking Irvin with a tire iron, with at least one of those strikes hitting Irvin in the head. Irvin also suffered other injuries from Deal and Ric Montoya, who accompanied Deal to Irvin's apartment. At trial, a doctor testified that multiple blunt and sharp force injuries caused Irvin's death, but the doctor also testified that the blunt force injuries to Irvin's head were enough to kill him. Following trial, a jury convicted Deal of unintentional but reckless second-degree murder.

On appeal, Deal argued that the evidence was insufficient to convict him of unintentional but reckless murder in the second degree because the evidence presented demonstrated he acted intentionally in beating Irvin, and neither he nor the State presented any evidence he acted unintentionally but recklessly. Or, to put this another way, Deal argued the killing was intentional and not reckless.

Our Supreme Court would go on to reject this argument. In doing so, our Supreme Court addressed the differences between intentional and unintentional but reckless second-degree murder, stating that "blind conduct, while one form of reckless conduct, is not the only type of conduct that can be reckless; even an intentional blow can result in an unintentional but reckless killing." 293 Kan. at 882. The focal point of the distinction between intentional and unintentional but reckless second-degree murder "is not the intent to inflict a blow but the intent to kill." 293 Kan. at 882. Our Supreme Court went on to state:

"[T]he language of K.S.A. 21-3402 does not support Deal's argument. Rather, the unambiguous language of this statute requires the killing—the result—to be either intentional or unintentional. Based on this language, this court has recognized that K.S.A. 21-3402(a), the provision relating to intentional second-degree murder, defines a specific intent crime; a defendant must have the specific intent to kill.

"On the other hand, under K.S.A. 21-3402(b) the result—the killing—must be unintentional. While the Kansas Legislature has not further defined an 'unintentional' killing, it has defined 'intentional conduct.' Under the definition in K.S.A. 21-3201(b), conduct is intentional if it is 'purposeful,' 'willful,' 'knowing,' and 'not accidental.' To be an unintentional killing, the killing must be the opposite of these things.

"But, even though the killing is unintentional, the legislature imposed a requirement that the killing be committed 'recklessly.' The legislature did not define 'recklessly' but did define 'reckless conduct' as 'conduct done under circumstances that show a realization of the imminence of danger to the person of another and a conscious and unjustifiable disregard of that danger.' Citing this definition, we recently explained that for a defendant's conduct to be reckless the defendant 'must know that he or she is

putting others in imminent danger . . . but need not foresee the particular injury that results from his or her conduct' for the conduct to be reckless. [Citations omitted.]" 293 Kan. at 883-84.

More recently, our Supreme Court noted that although *Deal* was decided before the Legislature's 2011 recodification of the criminal code, "the recodified statute on culpable mental states is consistent with its holding." *State v. James*, 309 Kan. 1280, 1299, 443 P.2d 1063 (2019).

Hooks argues that, based on the evidence produced at trial, "no reasonable juror could have concluded that [he] acted recklessly and did not intend to kill [Jones]." He also argues that he "never explicitly denied intending to kill [Jones] when he was beating her." But based on the holding of *Deal*, we reject Hooks' arguments.

Stated differently, a reasonable jury could have found that Hooks did not intend to kill Jones, even though it appears he intentionally battered her. See *Deal*, 293 Kan. at 882 ("intentional blow can result in an unintentional but reckless killing"). During trial, Hooks testified that he committed a "horrible act." He went on to say that he felt "so bad, but my intentions was definitely not—not—my intentions wasn't even to do that." Viewing the evidence in the light most favorable to the State, a reasonable jury could have taken this testimony to mean that Hooks did not intend to kill Jones, even though he battered her. See *Aguirre*, 313 Kan. at 209 (evidence reviewed in light most favorable to the State).

As a result, we affirm Hooks' conviction for unintentional but reckless second-degree murder.

Affirmed.