

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-652

RAYMOND D. FREEMAN
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered JANUARY 27, 2010

APPEAL FROM THE MADISON
COUNTY CIRCUIT COURT
[NO. CR-2008-39]

HONORABLE WILLIAM A. STOREY,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

On March 10, 2009, a Madison County jury found Raymond Freeman guilty of manslaughter. Freeman appeals the conviction, arguing that the State failed to present substantial evidence to corroborate his out-of-court statements. We affirm.

James O'Boyle was found dead in his bathroom on Thursday, May 15, 2008. A neighbor called his landlord, who later called the police, after noticing that the water had been running in O'Boyle's bathroom for the past three to four days and detecting a foul smell coming from the apartment. O'Boyle's blood was found on his couch and on his shirt. The chain lock had been broken off the front door, and several objects had been knocked over. O'Boyle's body was in a state of decomposition, but an employee with the Madison County Coroner's Office observed lacerations on the bridge of his nose and on his upper right arm. Dr. Frank Peretti,

a forensic pathologist with the State Crime Lab, placed the time of death in the early morning hours of the previous Tuesday.

On May 16, 2008, Freeman voluntarily gave a statement to Huntsville police. According to his statement, Freeman was at a cookout at the residence of Jeff Walden the Sunday prior to O'Boyle's death. Freeman and most of the people there (including O'Boyle) were drinking. Several people were boxing. O'Boyle was also boxing, though Freeman opined that O'Boyle should not have been because he did not have part of his skull on the right side of his face. Trouble began after Freeman and another person, Travis, wagered twenty dollars on an arm-wrestling contest. Freeman and Travis put their money and Travis's watch on the counter, and the money and watch later disappeared. They discovered the money and the watch in O'Boyle's pockets. Freeman was upset, as he and his friends regularly gave O'Boyle food and alcohol. In any event, according to Freeman, one person punched O'Boyle in the mouth, while he (Freeman) opened the door and pushed O'Boyle out. Five or ten minutes later, they realized that O'Boyle was still in the yard. Freeman and the others left the house, kicked him a few times, and told him to leave.

Freeman and another of his friends went to O'Boyle's residence the following afternoon. He told police that he went there to ask O'Boyle about why he took the money. O'Boyle denied taking the money, at which time Freeman punched him four or five times on the left side of his face. Freeman did not recall seeing any blood, and he told police that O'Boyle was alive and conscious when he left. He learned of O'Boyle's death from the friend who took him to

O'Boyle's that Monday afternoon. He denied going to O'Boyle's with the specific purpose of beating him up and stated that he only did so when O'Boyle "started playing stupid."

Dr. Peretti performed the autopsy and concluded that the cause of O'Boyle's death was an acute subdural hematoma. In his report, he noted a previous incident in August 2005, where O'Boyle was assaulted with a pipe, resulting in a traumatic brain injury. As a result, O'Boyle developed a seizure disorder and organic brain syndrome. In determining the manner of death, Dr. Peretti wrote that the death could have been caused either by the assault prior to his death or by him falling as a result of his seizure disorder and alcoholism. Accordingly, Dr. Peretti reported the manner of death as "undetermined." At trial, Dr. Peretti explained that subdural hematoma was essentially a blood clot in the brain, and that such clots were usually the result of trauma. Dr. Peretti testified that five punches to the head with a closed fist could cause subdural hematoma and that, had he known that O'Boyle had been punched five times in the head prior to his death, he would have ruled the death a homicide.

Other evidence presented at trial showed that during the cookout, O'Boyle was in a boxing match with another individual. The testimony was conflicting as to whether O'Boyle was hit in the head during the match. Another person at the cookout, Rhonda Ramrattin, testified she saw O'Boyle at Walden's home the following Monday. Ramrattin testified that O'Boyle had a few scratches on his face and that his eye was a little red, but that he had no other apparent injuries. She also saw Freeman that day, and she told the jury that Freeman was upset about O'Boyle returning to Walden's home. According to her testimony, Freeman told her that he was

going to “teach Mr. O’Boyle a lesson.”

At the conclusion of the State’s case, Freeman moved for a directed verdict, arguing that the State presented insufficient evidence to corroborate Freeman’s out-of-court statements. The motion was renewed at the close of evidence. The court denied the motion on both occasions. After deliberations, the jury found Freeman guilty of manslaughter, and the court sentenced Freeman to a seven-year term in the Arkansas Department of Correction, followed by a three-year suspended imposition of sentence.

The sole issue is whether the State presented sufficient evidence to support the manslaughter conviction. Freeman argues that his out-of-court statements were confessions, which required corroboration, and that the State failed to present substantial corroborating evidence. When considering a challenge to the sufficiency of the evidence, this court considers the evidence in the light most favorable to the State, considering only the evidence in favor of the guilty verdict, and affirms if the conviction is supported by substantial evidence. *Mitchem v. State*, 96 Ark. App. 78, 238 S.W.3d 623 (2006). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Baughman v. State*, 353 Ark. 1, 110 S.W.3d 740 (2003).

To prove that Freeman committed manslaughter, the State had to show that he recklessly caused O’Boyle’s death. *See* Ark. Code Ann. § 5-10-104(a)(3) (Supp. 2009). A person acts recklessly with respect to the result of his conduct when he consciously disregards a substantial and unjustifiable risk that the result will occur. Ark. Code Ann. § 5-2-202(3)(A) (Repl. 2006).

The risk must be of a nature and degree that disregard of the risk constitutes a gross deviation from the standard of care that a reasonable person would observe in the actor's situation. Ark. Code Ann. § 5-2-202(3)(B).

A confession of a defendant, unless made in open court, is insufficient to warrant a conviction unless it is accompanied with other proof that the offense was committed. Ark. Code Ann. § 16-89-111(d) (Repl. 2005). Known as the *corpus delicti* rule, this statute requires the State to establish (1) the existence of an injury or harm constituting a crime and (2) that the injury or harm was caused by someone's criminal activity. *Barnes v. State*, 346 Ark. 91, 55 S.W.3d 271 (2001). However, it is not necessary to establish any further connection between the crime and the defendant. *Id.* Further, the corroborating evidence need not be sufficient, by itself, to sustain the conviction. *Morgan v. State*, 286 Ark. 264, 691 S.W.2d 164 (1985); *Bryant v. State*, 16 Ark. App. 45, 696 S.W.2d 773 (1985).

Freeman and the State disagree as to what out-of-court statements constitute confessions. There are two statements relevant to this appeal: (1) Freeman's statement to the police, (2) Freeman's statement to Ramrattin that he was going to teach O'Boyle a lesson.¹ A confession is an admission of guilt as to the commission of a criminal act. *Stephens v. State*, 320 Ark. 426, 898 S.W.2d 435 (1995); *White v. State*, 73 Ark. App. 264, 42 S.W.3d 584 (2001). The *corpus delicti* rule does not apply to admissions that do not rise to the level of a confession. *See*

¹ Freeman argues that this statement was also inadmissible hearsay. He did not object to this statement as hearsay at trial; therefore, he is precluded from making this argument here. However, the statement was clearly admissible, as the definition of hearsay excludes statements made by a party-opponent. *See* Ark. R. Evid. 801(d)(2).

Stephens, supra (holding that the appellant's statement that he was driving the car did not require corroboration in a DWI case when the statement did not include an admission that he was intoxicated); *White, supra* (holding that the appellant's statement that he had a suspended license did not require corroboration in a charge of driving on a suspended license absent an admission that he was driving a vehicle).

When Freeman said that he was going to teach O'Boyle a lesson, he was not admitting guilt to the commission of a criminal act, as he had not committed a wrongful act at that time. The statement is evidence of his intent, but it does not rise to the level of a confession. Therefore, it need not be corroborated. Freeman's statement to the police, however, does qualify as a confession. According to the State's evidence, O'Boyle sustained blows to his head, resulting in his death. Freeman confessed to the act that led to O'Boyle's death. While Freeman stated that he did not intend to cause O'Boyle's death and that he did not think that the blows would have caused his death, the requisite mental state for a manslaughter conviction does not require that the actor know that his actions will lead to the death of the victim. Accordingly, for the State's proof to be sufficient, it must include evidence to corroborate Freeman's statement to Huntsville police.

Freeman contends that the State failed to corroborate each element of the crime. In other words, he asserts that the State failed to corroborate that *he* caused O'Boyle's death and that *he* did so recklessly. The *corpus delicti* rule does not require the State to corroborate that the defendant committed the crime charged; it merely requires a showing that the crime occurred.

In this case, the State made the requisite showing. The evidence shows that O'Boyle died hours after Freeman admittedly went to his apartment; that O'Boyle's apartment was in a state of disarray, which could have been interpreted as circumstantial evidence of a struggle; that blood was found in an area (his couch) not in the immediate vicinity of where he ultimately passed away (his bathroom); and that the medical examiner would have ruled O'Boyle's death a homicide had he known that O'Boyle had been punched in the head five times. This evidence, by itself, may have been insufficient to convict Freeman independent of his confession. However, the *corpus delicti* rule only requires the corroborating evidence to show that a crime was committed, which was done here. Accordingly, we hold that the State presented sufficient evidence to corroborate Freeman's confession.

Affirmed.

GRUBER and GLOVER, JJ., agree.