

State of New York Court of Appeals

MEMORANDUM

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No. 91 SSM 30
The People &c.,
Respondent,
v.
Grace Pietrocarlo,
Appellant.

Submitted by Michael J. Stachowski, for appellant.
Submitted by Daniel J. Punch, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Defendant challenges the sufficiency of the trial evidence supporting her conviction for assault in the second degree under a theory of accessorial liability. Viewing the evidence “in the light most favorable to the prosecution” and affording “the People . . . all reasonable evidentiary inferences” (*People v Delamota*, 18 NY3d 107, 113 [2011]), the

evidence was sufficient to support the verdict. The People presented testimony from the victim that defendant—his daughter—along with several other members of the victim’s family, confronted and repeatedly kicked him from “both sides” after he fell to the ground. Although the victim could not specifically identify who delivered each blow, he did identify the assailants—including defendant—at trial. This evidence, along with other circumstantial proof presented at trial, was sufficient for a reasonable factfinder to infer that defendant shared a “community of purpose” with the other assailants (*see People v Allah*, 71 NY2d 830, 832 [1988]). As such, there was a “valid line of reasoning and permissible inferences that could lead a rational person to conclude that every element of the charged crime has been proven beyond a reasonable doubt” (*Delamota*, 18 NY3d at 113).

WILSON, J. (dissenting):

No evidence in the record supports the proposition that Grace Pietrocarlo could be found liable for second-degree assault as an accessory. The People offered no evidence specific as to Grace's actions during the charged incident and did not establish that Grace

even took part in the assault on her father; when asked if he could tell which of his four family members who were present during the assault kicked him, Mr. Pietrocarlo testified that he “couldn’t tell who was doing it.” The People’s circumstantial evidence from days after the offense are “equivocal” as to Grace’s intent (*People v Yarrell*, 146 AD2d 819, 822 [2d Dept 1989] [Brown, J., dissenting], *dissent adopted by* 75 NY2d 828 [1990]), and our case law does not establish that the People may prove that a defendant shared the intent required for accomplice liability based on a series of events that are remote from the offense itself. The sum total of the People’s evidence against Grace is that she was present in her own home and observed the assault, which is insufficient to demonstrate that she “shared a community of purpose” with her other family members to assault her father (*People v Allah*, 71 NY2d 830, 831 [1988]). I would therefore reverse Grace’s conviction.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Singas and Cannataro concur. Judge Wilson dissents in an opinion.

Decided December 14, 2021