No. 32730-2-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

A.L.-A,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR YAKIMA COUNTY, JUVENILE DEPARTMENT

REPLY BRIEF

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A. ARGUMENT

1. Because the State failed to prove that A. intended to inflict great bodily harm, reversal should be granted.

At trial, the State was required to prove that A. actually intended to kill her older sister, Yesenia, or that she intended to inflict injuries so serious that they would create a probability of death.

Under RCW 9.94A.110(4)(c), the mens rea required to commit assault in the first degree is the specific intent to commit great bodily harm. State v. Elmi, 166 Wn.2d 209, 215, 207 P.3d 439 (2009). "Specific intent is defined as intent to produce a specific result, as opposed to intent to do the physical act that produces the result." Elmi, 166 Wn.2d at 215 (quoting State v. Wilson, 125 Wn.2d 212, 218, 883 P.2d 320 (1994) (emphasis added)).

Thus, the State was required to show that A. specifically intended – not just the physical act of holding or even thrusting the knife – but that she intended to cause the specific result that followed -- the purportedly serious injuries to her sister. See Elmi, 166 Wn.2d at 215. A. never intended to kill or to seriously injure Yesenia, even if

her injuries were, in fact, serious.[1] A.'s lack of intent was evident – not only from Yesenia's own testimony, but from the trial court's findings. CP __, sub. no. 53 (CL 2). Yesenia testified at trial that she never believed A. seriously threatened to kill her that day during the argument. RP 44. The trial court apparently did not believe so either, since the court acquitted A. of felony harassment, finding no intentional threat to kill. CP __, sub. no. 53 (CL 2).

Accordingly, due to insufficient proof of intent to inflict the specific result of death or great bodily harm, reversal should be granted.

2. Because there was insufficient evidence that the knife, under these circumstances, was a deadly weapon, reversal should be granted.

The State failed to prove at trial that the knife, in its "inherent capacity and 'the circumstances in which it [was] used,'" was a deadly weapon. See State v. Shilling, 77 Wn. App. 166, 171, 889 P.2d 948 (1995) (quoting statutory language). A weapon's ready capability is assessed in terms of its potential for inflicting substantial bodily harm. Id.; see State v. McKague, 172 Wn.2d 802, 805-06, 262 P.3d 1225 (2011) (defining "substantial"). This Court recently cited McKague

[1] The seriousness of the injury is not conceded, since Yesenia did not even notice the cut for some time, and officers did not even suggest medical attention be offered to her. RP 45-47, 75.

when holding that "'substantial' signifies a degree of harm that is considerable and necessarily requires a showing greater than an injury merely having some existence." State v. Rich, 186 Wn. App. 632, 647, 347 P.3d 72, 80-81 (2015) (quoting McKague, 172 Wn.2d at 805-06).

The State argues that the proof was sufficient because the knife purportedly caused substantial bodily harm or was capable of such. In support of its argument, the State cites cases such as State v. Ashcraft, for the proposition that a bruise can constitute a substantial disfigurement. 71 Wn. App. 444, 455, 859 P.2d 60 (1993). However, this case is different from Ashcraft, which was a matter involving a victim brutalized over a long period of time with a series of different weapons. Id. The victim in Ashcraft, moreover, was given medical attention at a hospital, which brought to light the chronic nature of the complainant's victimization – a far cry from the simple "girl fight" here, where medical attention was neither required nor sought. Id.; RP 45-47, 75.

The State also cites State v. Holmes, a first degree robbery case. 106 Wn. App. 775, 781-82, 24 P.3d 118 (2001). Holmes, which involved an armed robbery of a grocery store in the middle of the night, is inapposite. Id. at 782. The instant case involved an argument between two sisters, the younger of whom, the appellant, was fourteen years old.

RP 106. The alleged-victim here, Yesenia, also admittedly threw punches, made threats, and destroyed property during the altercation in the instant case. RP 28, 34-35, 45, 51, 90.

Even in the light most favorable to the State, without a showing that Yesenia was actually endangered, simply showing that A. was swinging the knife in front of her fails to prove what is required under the statute: that in the manner in which it was used, the knife was readily capable of causing death or substantial bodily harm.[2]

Without proof that the knife was used or threatened to be used in such a way as to make it "readily capable" of causing substantial bodily harm or death, for a cut as inconsequential as Yesenia's to qualify as substantial bodily harm in order to support a conviction for first-degree assault—a crime reserved for the most serious assaults short of death—this would render the term "substantial" redundant.

The evidence presented at trial failed to establish that the circumstances in which the knife was used prove the knife was a deadly weapon, as required by the statute. Neither does the evidence establish that the knife was readily capable of causing death or substantial bodily harm. RCW 9A.04.110(4), (6).

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[2] What the knife actually looked like is unknown, as the State did not preserve it or offer the knife as evidence at trial. RP 37-39.

Accordingly, reversal is required. RCW 9A.04.110(4), (6); McKague, 172 Wn.2d at 805-06.

B. CONCLUSION

For the reasons stated above, as well as those cited in the Brief of Appellant, the conviction should be reversed, and the case remanded for entry of a conviction for assault in the fourth degree.

DATED this 27th day of July , 2015.

Respectfully submitted,

s/ Jan Trasen
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent, v. A.L-A., Juvenile Appellant.	)))))))))	NO. 32730-2-III

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 27TH DAY OF JULY, 2015, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] TAMARA HANLON [tamara.hanlon@co.yakima.wa.us] YAKIMA CO PROSECUTOR'S OFFICE 128 N 2ND STREET, ROOM 211 YAKIMA, WA 98901-2639	( ) ( ) (X)	U.S. MAIL HAND DELIVERY AGREED E-SERVICE VIA COA PORTAL

SIGNED IN SEATTLE, WASHINGTON THIS 27TH DAY OF JULY, 2015.

X_____

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