No. 94380-0
COA No. 74256-6-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KEBEDE ABAWAJI,

Petitioner.

E

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable John H. Chun

PETITION FOR REVIEW

THOMAS M. KUMMEROW
Attorney for Petitioner

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

A. IDENTITY OF PETITIONER

Kebede Abawaji asks this Court to accept review of the Court of Appeals decision terminating review designated in part B of this petition.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b), petitioner seeks review of the unpublished Court of Appeals decision in *State v. Kebede Abawaji*, No. 74256-6-I (March 6, 2017). A copy of the decision is in the Appendix.

C. ISSUE PRESENTED FOR REVIEW

Two or more offenses must be joined if they are related offenses, unless the prosecutor did not possess sufficient evidence to warrant trying them together, or the "ends of justice" would be defeated. Arising out of a single incident, Mr. Abawaji was charged with assault and unlawful display of a weapon in municipal court, but the charges were dismissed when the victim failed to appear at trial. Mr. Abawaji was subsequently charged with felony harassment for remarks he made during the assault and the prosecution was aware of these remarks. Is an issue of substantial public interest that this Court must decide where the trial court erred in failing to dismiss the

harassment count for a violation of mandatory joinder requiring dismissal of that count?

D. STATEMENT OF THE CASE

Tigist Belte and Kebede Abawaji were married in their native country of Ethiopia on October 25, 1999. 9/30/2015RP 497. The couple immigrated to Washington in 2003. 9/30/2015RP 497. The couple had five children, aged five to sixteen years. 9/30/2015RP 496. The relationship suffered from the struggle of meshing traditional mores with modern American society, including the role of women.

In 2011, the couple separated but Mr. Abawaji continued to frequent the family's residence. 9/30/2015RP 502. On November 1, 2014, Ms. Belte and Mr. Abawaji became embroiled in an argument, which resulted in Ms. Belte claiming Mr. Abawaji threatened to kill her. 9/30/2015RP 519. Mr. Abawaji was charged in Seattle Municipal Court with one count of fourth degree assault and one count of unlawful use of a weapon. CP 25; 37. The matter was scheduled for a jury trial on January 20, 2015, but Ms. Belte did not appear. CP 26, 37. As a result, the following day the case was dismissed with prejudice. CP 26, 37.

Mr. Abawaji and Ms. Belte divorced in February 2015. 9/30/2015RP 529. Mr. Abawaji believed that Ms. Belte had become involved with another man, and he believed that in Oromo culture, his life was now in danger. 10/5/2015pmRP 38.[1] On April 1, 2015, Mr. Abawaji went to confront Ms. Belte regarding his suspicions. 10/5/2015pmRP 67. What occurred next was sharply contested.

Ms. Belte testified that she had returned home but had forgotten her purse in the car. 9/30/2015RP 541. As she approached the car, she felt something behind her and turned. 9/30/2015RP 541-42. Ms. Belte saw Mr. Abawaji and she claimed he struck her on the right side of the forehead with a hammer. 9/30/2015RP 542. She subsequently regained consciousness in the hospital. 9/30/2015RP 543.

Mr. Abawaji agreed that he went to confront Ms. Belte. 10/5/2015pmRP 67. Ms. Belte approached Mr. Abawaji and grabbed him. 10/5/2015pmRP 79. He pushed her away, she stumbled, then fell to the ground with Mr. Abawaji on top of her. 10/5/2015RP 82. Mr. Abawaji saw Ms. Belte bleeding and called 911. 10/5/2015pmRP 82-

[1] Mr. Abawaji explained that in the Oromo culture, if a married woman begins a relationship with another man, the lover may try to kill the husband. 10/5/2015amRP 61.

85. When the police arrived, Mr. Abawaji was arrested.

10/5/2015pmRP 90.

Mr. Abawaji was charged with attempted first degree murder, first degree assault, and felony harassment. CP 11-12. Prior to trial, Mr. Abawaji moved to dismiss the felony harassment count as a violation of mandatory joinder under CrR 4.3.1. CP 37-39; 9/23/2015RP 29; 9/24/2015RP 131. The trial court refused to dismiss the count:

> I do note, though, that the fact that they are dealing with Municipal Court versus District Court, we are dealing with two separate prosecuting agencies, does mitigate in favor of denial of the motion. *But my primary reason for denying the motion is based on Criminal Rule 4.3.1(b)(3) where it says that if the motion can be denied for some other reason, the ends of justice would be defeated.*
>
> And one concern that I have is that even though the proceedings that took place in Municipal Court may fall in the definition of "trial" as discussed in *State v. Dixon,* nevertheless, he had not really been tried. There has not been a result in connection with the accusation that there was harassment. Of course, harassment was not part of the charges in Municipal Court.
>
> Second, I am concerned, very concerned about the possibility that this issue could never reach trial because of pressure being placed on the alleged victim. That's of great concern to me.
>
> For those reasons, I'm denying the motion to dismiss the harassment charge.

9/24/2015RP 151-52 (emphasis added).

Following a jury trial, Mr. Abawaji was convicted of the lesser degree offense of attempted second degree murder. CP 238. The jury also found Mr. Abawaji guilty of first degree assault and felony harassment. CP 239, 241. At sentencing, the court vacated the assault count as violative of double jeopardy. CP 299; 11/6/RP 2015RP 152.

On appeal, the Court of Appeals affirmed Mr. Abawaji's harassment conviction over his mandatory joinder argument, finding that the municipal court had sole jurisdiction over the harassment count. Decision at 6.

E. ARGUMENT ON WHY REVIEW SHOULD BE GRANTED

The conviction for felony harassment violated mandatory joinder should have been dismissed.

Generally, the mandatory joinder rule requires the State to charge all related offenses in a single information. If the State fails to timely charge a related offense, the mandatory joinder rule precludes it from later charging that defendant with the related offense arising out of the same conduct "unless the court determines that ... the ends of justice would be defeated if the motion [to dismiss for failure to join a related offense] were granted." CrR 4.3.1(b)(3).[2]

[2] CrR 4.3.1(b), provides in part:

State v. Gamble, 137 Wn.App. 892, 902, 155 P.3d 962 (2007), *aff'd*, 168 Wn.2d 161, 225 P.3d 973 (2010).

The mandatory joinder rule is founded on Article I, Section 22 of the Washington State Constitution, which provides: "In criminal prosecutions the accused shall have the right . . . to demand the nature and cause of the accusation against him . . . ." Under this provision, "an accused must be informed of the charge he or she is to meet at trial, and cannot be tried for an offense not charged." *State v. Pelkey*, 109 Wn.2d 484, 487, 745 P.2d 854 (1987), *citing State v. Carr*, 97 Wn.2d 436, 439, 645 P.2d 1098 (1982); *State v. Rhinehart*, 92 Wn.2d 923, 602 P.2d

---

(1) Two or more offenses are related offenses, for purposes of this rule, if they are within the jurisdiction and venue of the same court and are based on the same conduct.
(2) When a defendant has been charged with two or more related offenses, the timely motion to consolidate them for trial should be granted unless the court determines that because the prosecuting attorney does not have sufficient evidence to warrant trying some of the offenses at that time, or for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to so move constitutes a waiver of any right of consolidation as to related offenses with which the defendant knew he or she was charged.
(3) A defendant who has been tried for one offense may thereafter move to dismiss a charge for a related offense, unless a motion for consolidation of these offenses was previously denied or the right of consolidation was waived as provided in this rule. The motion to dismiss must be made prior to the second trial, and shall be granted unless the court determines that because the prosecuting attorney was unaware of the facts constituting the related offense or did not have sufficient evidence to warrant trying this offense at the time of the first trial, or for some other reason, the ends of justice would be defeated if the motion were granted.

1188 (1979). "Mandatory joinder is required for related offenses to ensure "a single disposition of all charges arising from one incident." *State v. Harris*, 130 Wn.2d 35, 921 P.2d 1052 (1996).

The remedy for a violation of the when the mandatory joinder rule is dismissal of the additional charges with prejudice. CrR 4.3.1(b)(1); *State v. Dallas*, 126 Wn.2d 324, 329, 892 P.2d 1082, 1086 (1995). The trial court's application of the mandatory joinder rule is reviewed *de novo*. *State v. Kindsvogel,* 149 Wn.2d 477, 480, 69 P.3d 870 (2003); *State v. Kenyon,* 150 Wn.App. 826, 833, 208 P.3d 1291 (2009).

Offenses are related where they are based on the same conduct. *State v. Lee*, 132 Wn.2d 498, 501, 939 P.2d 1223 (1997). "Same conduct" is "conduct involving a single criminal incident or episode." *Id.*, at 503.

Here all the charges arose of one single incident that occurred on November 1, 2014. During this incident, Ms. Belte alleged that Mr. Abawaji threatened to kill her after he choked her and threatened her with a knife. 9/30/2015RP 508-523. This was a single episode; a domestic violence incident occurring in the home between Ms. Belte and Mr. Abawaji. At that time, the State had all the facts it needed to

charge assault, harassment, and unlawful display of a weapon, but chose not to charge the harassment, despite the requirements of mandatory joinder. The trial court erred in failing to dismiss the harassment count here.

Two or more offenses are related offenses, for purposes of this rule, if they are within the jurisdiction and venue of the same court and are based on the same conduct." CrR 4.3.1(b)(1). Offenses that are related must be charged together or they will be subject to dismissal under CrR 4.3.1(b)(3). Under that rule, a trial court must grant a motion to dismiss made before the second trial unless the State proves that (1) the prosecuting attorney did not previously file the charge because it was unaware of facts constituting the related offense or did not have sufficient evidence to try the offense, or (2) the ends of justice would be defeated if the motion were granted. *Kenyon*, 150 Wn.App. at 831.

The trial court was concerned that the offenses were not related offenses because they were not prosecuted in the same jurisdiction, noting the assault and unlawful display of a weapon were filed in municipal court and the felony harassment was filed in superior court. 9/24/2015RP 151.

The Court of Appeals incorrectly agreed with the trial court, dismissing the decision in *State v. Dixon*, 42 Wn.App. 315, 711 P.2d 1046 (1985), thus misreading the holding in that case. In *Dixon*, the State prosecuted Mr. Dixon in Seattle District Court on a misdemeanor charge of aiming or discharging a firearm. That charge was subsequently dismissed because the State had not subpoenaed a critical witness. 42 Wn.App. at 316. The State subsequently charged Mr. Dixon in superior court with being a felon in possession of a firearm. *Id.* The trial court denied Mr. Dixon's motion to dismiss for a violation of mandatory joinder, and he was subsequently convicted. *Id.* This Court reversed the conviction, finding the trial court erred in denying the motion to dismiss. *Id.* at 319. The Court noted that both offenses are within the jurisdiction and venue of King County *Superior* Court and are based on the defendant's conduct with a pistol on the evening of December 1, 1983. *Dixon*, 42 Wn.App. at 317.

Plainly the decision in *Dixon* ends the discussion that municipal court and superior court cannot be the same jurisdiction. Harassment is an offense that could be adjudicated in either a courts of limited jurisdiction or superior court. Harassment only becomes a felony in the exclusive jurisdiction of the superior court where the State seeks to

prove the threat was a threat to kill. RCW 9A.46.020(1)-(3). As a consequence, misdemeanor harassment was available to the prosecutor in the municipal court action but chose not to file and prosecute it. Under the rationale of *Dixon*, the trial court erred in refusing to dismiss because the *Superior* Court had jurisdiction and venue over the harassment count as noted by *Dixon*.

In addition, the decision in *Dixon* also dismisses the trial court's conclusion that Mr. Abawaji had "not really been tried[that there had] not been a result in connection with the accusation that there was harassment. " 9/24/2015RP 151. As *Dixon* concluded, Ms. Belte did not appear and Mr. Abawaji was present and ready to defend himself, thus implicitly, the State failed to prove the elements of the offenses. *Dixon*, 42 Wn.App. at 318-19.

This Court should grant review to determine whether the fact the harassment count could properly be charged in municipal or superior court rendered the conviction for harassment a violation of mandatory joinder.

F. CONCLUSION

For the reasons stated, Mr. Abawaji asks this Court to grant review and reverse his harassment conviction.

DATED this 20th day of March 2017.

Respectfully submitted,

s/Thomas M. Kummerow

THOMAS M. KUMMEROW (WSBA 21518)
tom@washapp.org
Washington Appellate Project – 91052
Attorneys for Petitioner

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,	)	No. 74256-6-I
	)	DIVISION ONE
v.	)	
KEBEDE ABAWAJI,	)	UNPUBLISHED OPINION
Appellant.	)	FILED: March 6, 2017

SPEARMAN, C.J. — Mandatory joinder applies only to charges based on the same conduct within the jurisdiction of the same court. CrR 4.3.1. Kebede Abawaji was convicted of attempted murder in the second degree and felony harassment. On appeal, he contests the felony harassment conviction arguing that the trial court erred when it refused to dismiss the charge as a violation of mandatory joinder under CrR 4.3.1. Because mandatory joinder did not apply in this case, we reject this argument. In a statement of additional grounds, Abawaji also contests his conviction of attempted murder in the second degree, but the arguments are without merit. We affirm.

FACTS

Kebede Abawaji and Tigist Belte married in Ethiopia in 1999. They immigrated to the United States in 2003. The couple had five children together. At some point, the couple separated. After their separation, the couple engaged in disputes over Belte's alleged relationship with another man.

On November 1, 2014, Belte and Abawaji were in her upstairs bedroom. Abawaji was angry and began arguing with Belte. At one point, he grabbed Belte by her neck, threw her onto the bed and choked her. Abawaji told Belte that he was going to kill her. Belte was able to get away and went downstairs. Abawaji followed her. He then went to the kitchen got a large knife and came towards her. Belte fled the home. After the couple's son was able to disarm Abawaji, Belte returned to the house and called 911. Seattle Police Department officers responded. Abawaji was taken into custody and the matter was referred to the Seattle City Attorney's Office.

Based on this incident, Abawaji was charged in Seattle Municipal Court with one count of assault in the fourth degree and one count of unlawful use of a weapon. While the charges were pending, Belte's mother died. Members from their Ethiopian community comforted Belte. They also convinced her to drop the charges against Abawaji. The case against Abawaji proceeded to trial in Seattle Municipal Court but was dismissed with prejudice when Belte did not appear for trial. A short time later, Abawaji and Belte divorced. However, Abawaji remained involved with Belte and the children.

On April 1, 2015, officers responded to a 911 call on the street near Belte's home. Abawaji reported to the 911 operator that he hit his wife in the head with a hammer because she pissed him off. When officers arrived, Abawaji immediately lay on the ground and put his hands behind his back. The officers arrested Abawaji.

Abawaji was charged in King County Superior Court with attempted murder in the first degree and assault in the first degree based on this incident. He was also charged with felony harassment based on Abawaji's alleged threat to kill Belte on November 1, 2014.

Prior to trial, Abawaji moved to dismiss the felony harassment charge. He argued that the harassment charge and the two misdemeanor charges filed in Seattle Municipal Court were "related offenses" as that term is defined in CrR 4.3.1, the mandatory joinder rule.[1] He argued that because the harassment charge was not joined with the misdemeanor charges, under the rule, it must be dismissed.

The State argued that the mandatory joinder rule did not apply because the offenses were not related. In the alternative, the State urged the court to deny the motion because "the ends of justice would be defeated if the motion were granted." CrR 4.3.1(b)(3). The State argued that the exception applied because

---

[1] CrR 4.3.1(b) provides in part:

> (1) Two or more offenses are related offenses, for purposes of this rule, if they are within the jurisdiction and venue of the same court and are based on the same conduct.
>
> (2) When a defendant has been charged with two or more related offenses, the timely motion to consolidate them for trial should be granted unless the court determines that because the prosecuting attorney does not have sufficient evidence to warrant trying some of the offenses at that time, or for some other reason, the ends of justice would be defeated if the motion were granted. A defendant's failure to so move constitutes a waiver of any right of consolidation as to related offenses with which the defendant knew he or she was charged.
>
> (3) A defendant who has been tried for one offense may thereafter move to dismiss a charge for a related offense . . . . The motion to dismiss must be made prior to the second trial, and shall be granted unless the court determines that because the prosecuting attorney was unaware of the facts constituting the related offense or did not have sufficient evidence to warrant trying this offense at the time of the first trial, or for some other reason, the ends of justice would be defeated if the motion were granted.

the municipal court charges against Abawaji were dismissed only after Belte succumbed to pressure from community members and did not testify against him.

The trial court appeared to rely on both grounds argued by the State and denied the motion to dismiss.

Following trial, the jury convicted Abawaji of the lesser-included offense of attempted murder in the second degree, assault in the first degree, and felony harassment. The trial court vacated the first degree assault conviction on double jeopardy grounds. Abawaji appeals.

DISCUSSION

Abawaji claims that the trial court erred when it did not dismiss the felony harassment charge because it violated the mandatory joinder rule. Application of the mandatory joinder rule is a question of law that we review de novo. State v. Kindsvogel, 149 Wn.2d 477, 480, 69 P.3d 870 (2003) (citing State v. Ledenko, 87 Wn. App. 39, 42, 940 P.2d 280 (1997)). We may affirm the trial court on any basis supported by the record. State v. Henderson, 34 Wn. App. 865, 870-71, 664 P.2d 1291 (1983) (citing Pannell v. Thompson, 91 Wn.2d 591, 603, 589 P.2d 1235 (1979)).

The mandatory joinder rule requires that all related offenses be joined, "if they are within the jurisdiction and venue of the same court and are based on the same conduct." CrR 4.3.1(b)(1). Acts committed during a single criminal episode constitute the "same conduct." State v. Gamble, 168 Wn.2d 161, 168, 225 P.3d 973 (2010) (citing State v. Watson, 146 Wn.2d 947, 957, 51 P.3d 66 (2002)). An

exception to mandatory joinder exists when application of that rule would defeat "the ends of justice." CrR 4.3.1(b)(3).

Relying on State v. Dixon, 42 Wn. App. 315, 711 P.2d 1046 (1985), Abawaji contends that under CrR 4.3.1(b)(1), the felony harassment charge is related to the charges filed in Seattle Municipal Court. He argues that Dixon "end[ed] the discussion that municipal court and superior court cannot be the same jurisdiction" for purposes of the rule. Brief of Appellant at 11. But Abawaji misreads what was at issue in that case.

In Dixon, we did not consider whether a municipal court and a superior court may be within the same jurisdiction. In that case, the State conceded that a charge brought against the defendant in Seattle District Court was also within the jurisdiction of King County Superior Court. (Emphasis added). Dixon, 42 Wn. App. at 317. The only disputed issues were whether the defendant had waived joinder or whether the rule applied at all because the misdemeanor charges had been dismissed and not tried.

The State argues that the charges at issue in this case are not related because Seattle Municipal Court and King County Superior Court do not share the same jurisdiction. We agree. In State v. Fladebo, 53 Wn. App. 116, 119, 765 P.2d 1310 (1988), the defendant, Kathryn Fladebo, was arrested for driving while intoxicated (DWI). Id. at 117. During the course of her arrest, she was found to be in possession of heroin. Id. Fladebo was charged in Mount Vernon Municipal Court with [DWI] in violation of Mount Vernon Municipal Code 10.04. Id. She was subsequently charged in Skagit County Superior Court with possession of a

controlled substance, a felony, under RCW 69.50.401(d). Id. Relying, in part, on the mandatory joinder rule, Fladebo argued that the felony should have been dismissed because it arose from the same conduct as the DWI. Id. at 118. We rejected the argument, holding that the mandatory joinder rule:

> does not apply to this case because the 'related offenses' must be 'within the jurisdiction and venue of the same court' . . . . CrR 4.3(c)(1) [recodified as CrR 4.3.1(b)(1)]. The Mount Vernon Municipal Court has exclusive jurisdiction over the violation of a Mount Vernon municipal ordinance, the driving while intoxicated charge, but no jurisdiction over the violation of the Washington Criminal Code, the possession charge.

Id. at 118-19.

Similarly, here, Seattle Municipal Court has "exclusive original criminal jurisdiction of all violations of city ordinances . . . ." RCW 3.50.020. Thus, the assault in the fourth degree charge and the unlawful use of a weapon charge, were properly prosecuted in that court. But Seattle Municipal Court has no jurisdiction over the felony harassment charge, because King County Superior Court has original jurisdiction over "all criminal cases amounting to felony . . . ." RCW 2.08.010. We conclude the mandatory joinder rule is inapplicable to this case. The trial court did not err when it denied Abawaji's motion to dismiss on that ground.[2]

Abawaji also asks that no costs be awarded on appeal. Appellate costs are generally awarded to the substantially prevailing party on review. However, when a trial court makes a finding of indigency, that finding remains throughout

[2] Because we conclude that the mandatory joinder rule does not apply, we do not reach Abawaji's arguments concerning the ends of justice exception to the mandatory joinder rule.

review "unless the commissioner or clerk determines by a preponderance of the evidence that the offender's financial circumstances have significantly improved since the last determination of indigency." RAP 14.2. Here, Abawaji was found indigent by the trial court. If the State has evidence indicating that Abawaji's financial circumstances have significantly improved since the trial court's finding, it may file a motion for costs with the commissioner.

Statement of Additional Grounds

Abawaji raises seven further challenges in a statement of additional grounds (SAG). First, he asserts that tests were performed on the hammer, but the jury was not provided with the results of those tests. He appears to argue that the State performed testing on the hammer and hid the results from the jury. There is nothing in the record to suggest that the State actually conducted testing on the hammer or even if it did, that the test results would be favorable to Abawaji. Indeed, the State claimed at trial that it did not conduct any such tests because it did not need to in light of Abawaji's admission that he committed the assault. If there is evidence that the hammer was tested with results favorable to Abawaji, it is outside of the record before us and we are thus, unable consider it on direct appeal.

Next, Abawaji asserts that the jury was not provided with his psychological evaluation. He appears to argue that this was error because the evaluation supported his claim that there was no connection between "the alleged weapon and the crime" and "between the alleged weapon and me, the defendant." SAG at 2. The record shows that defense counsel retained Dr. Spizman in preparation

for the trial. Dr. Spizman interviewed and prepared a written evaluation of Abawaji. But Dr. Spizman did not testify, and the evaluation was not offered as evidence at trial.[3] But we can discern nothing in the evaluation that supports Abawaji's claim that it contains evidence showing there is no connection between the hammer, the crime, and himself. Accordingly, we reject the argument.

Abawaji also asserts that the State failed to provide an interpreter for one of its witnesses, Mounira Boucenna. He claims that as a result, the State took advantage of her during her testimony causing her to be upset and ask for an interpreter, which prevented her from expressing "what was on her mind." SAG at 3. But the record does not reveal that Boucenna was upset or that she had any particular difficulties during her direct testimony. Nor does it show that Boucenna had testimony favorable to Abawaji that she was unable to give. To the extent such evidence may exist, it is not part of the record on appeal and we cannot consider it.

During cross examination, Boucenna did testify that she had asked for an interpreter but that the request was denied. The exchange took place as follows:

> [Defense]: It's fair to say you did not see what caused Ms. Belte's injuries?
> [Boucenna]: I don't understand with my English. I did ask for interpreter.
> [Defense]: You don't have one?
> [Boucenna]: I did ask for Amharic. They said, "you are asking too much," like that.
> [Defense]: You asked for an interpreter?
> [Boucenna]: Yes
> [Defense]: One wasn't provided?
> [Boucenna]: Yeah, like, last night, yesterday.

[3] The evaluation is part of the record because it was attached to defense counsel's presentence report submitted on behalf of Abawaji.

> [Defense]: Let me ask my question again. First, tell me if you understand what I'm asking.
> [Boucenna]: Okay

Verbatim Report of Proceedings (VRP) (9/30/15) at 489-90.

Boucenna did not appear to have any further difficulty understanding defense counsel's questions. Id. In response to defense counsel's question about whether she saw what caused Belte's injuries, Boucenna stated that she did not. Id. at 490. Because the record gives no indication that Boucenna's proficiency in English prevented her from giving testimony favorable to Abawaji, we reject his claims.

Abawaji next contends that the jury did not have sufficient evidence to prove that he assaulted Belte with the hammer. He argues that the officer who collected the hammer from the scene testified that he did not see "no sight of blood, body tissue, [or] hair" on the hammer, so the jury did not have sufficient evidence to assume the hammer was used during the assault. SAG at 3.

Evidence is sufficient to support a criminal conviction when, viewed in the light most favorable to the State, a reasonable fact finder could have found the necessary elements of the crime beyond a reasonable doubt. State v. Drum, 168 Wn.2d 23, 34-35, 225 P.3d 237 (2010) (citing State v. Wentz, 149 Wn.2d 342, 347, 68 P.3d 282 (2003)). Seattle Police Officer McAuliffe, who responded to the scene, testified that he did not notice any blood or tissue on the hammer when he collected it from Abawaji's car. However, Belte testified that Abawaji assaulted her with a hammer. And Abawaji told the 911 operator that he hit Belte with a hammer. Additionally, a hammer was collected from Abawaji's car after he

directed police officers where to find it. This evidence is more than sufficient to support the jury's verdict. We reject Abawaji's claim.

Abawaji also asserts that the jury should not have relied on his statement to law enforcement officers because those statements were made in fear due to his cultural background. Abawaji testified he lied to the 911 operator about the hammer to get help to Belte faster. He said that he did not change his story when officers arrived on scene because he did not want officers to assault him. He stated that "in [his] country, police beat you up to death." 2(VRP) (10/05/15)[4] at 91. He stated that he did everything the police wanted because he did not want to get beat. The jury considered his testimony on these issues and rejected it. Because we do not reweigh evidence on appeal, we reject Abawaji's claim.

Next, Abawaji asserts that the jury was not in agreement, the jury was pressured into accepting the verdict, and the trial court erred in not declaring a mistrial. He appears to refer to a discussion that occurred when the trial court polled the jury. Abawaji was charged with attempted murder in the first degree, assault in the first degree, and felony harassment. The jury convicted Abawaji for the lesser-included offense of attempted murder in the second degree, and as charged for the other two offenses.

When the jury was polled after providing a verdict, two jury members were confused on what the clerk was asking. Juror number eleven asked "May I inquire if by that do you mean did I agree on a greater count, but then it was–we

[4] There are two Verbatim Report of Proceedings that took place on October 5, 2015, and they have been numbered separately (they both start on page 1). The morning proceedings hereinafter are referred to as 1VRP (10/05/15) and the afternoon proceedings hereinafter are referred to as 2VRP (10/05/15).

couldn't all agree, and so then we all agreed on the lesser count or–I guess I don't understand the question." VRP (10/08/15) at 143. After a sidebar, the question was rephrased to provide clarity for the jurors. The court then asked each juror ". . . is the guilty verdict on Count I, attempted murder in the second degree, your individual verdict?" Id. Both jurors agreed that it was their individual verdict and the verdict of the jury. We reject Abawaji's claims that the jury was not in agreement and was pressured into accepting a guilty verdict.

Finally, Abawaji asserts that testimony concerning the November domestic violence incident was inaccurate or inconsistent. He contends that the State's witnesses testified that he was holding a knife, but in fact, he was holding only a plastic knife. Id. But for purposes of the felony harassment charge, whether the knife was plastic is irrelevant. We reject Abawaji's argument.

Affirmed.

Spearman, J.

WE CONCUR:

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 74256-6-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Ian Ith, DPA
[PAOAppellateUnitMail@kingcounty.gov]
[ian.ith@kingcounty.gov]
King County Prosecutor's Office-Appellate Unit

☒ petitioner

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: March 20, 2017