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NO. 65613-9-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

O.F.,

Appellant.

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OCT 08 2010
King County Prosecutor
Appellate Unit

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COURT OF APPEALS DIV. #1
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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY, JUVENILE
DIVISION

The Honorable Philip G. Hubbard, Jr., Judge

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The evidence is insufficient to support appellant's conviction for disorderly conduct.

2. The trial court erred when it concluded the State had proved that appellant intentionally disrupted a lawful assembly and meeting of people (conclusion of law II(1)).

Issues Pertaining to Assignments of Error

1. To commit disorderly conduct, an individual must intentionally disrupt an assembly or meeting. The trial court, however, interpreted the statute for this offense to merely require an intentional act that happens to disrupt an assembly or meeting. Did the trial court err?

2. There was no evidence presented that appellant intended to disrupt an assembly or meeting. Should appellant's erroneous conviction be reversed?

B. STATEMENT OF THE CASE

The King County Prosecutor's Office charged juvenile O.F. with one count of disorderly conduct. CP 1. His case was consolidated for trial with that of his co-respondent, J.B. RP 1. The trial court's written findings of fact and conclusions of law summarize the evidence presented by the three witnesses called at trial. See CP

10-14 (attached to this brief as an appendix).

James Johnson is a mathematics teacher at Lake Washington High School in Kirkland. RP 9. First period classes begin at 8:00 a.m. A warning bell sounds at 7:55 a.m. and a second bell sounds at 8:00 a.m. to signal the start of class. RP 10. On September 29, 2009, before the start of classes, Johnson was in his classroom reviewing the day's lesson plan with a student teacher when he heard a commotion outside. A student entered the classroom and said there was a fight in the hallway. RP 9-11, 25-26.

Johnson went out in the hall and saw O.F. and J.B. fighting. RP 11, 14. Another student was trying to separate them. Johnson told the boys to stop, but they continued fighting. RP 11-12, 14-15. Approximately 30 students had gathered to watch, a number that almost doubled by the time the fray ended. RP 12-13. The boys temporarily paused and then started hitting each other again, a pattern that repeated itself two or three times before teachers separated them for good. RP 15, 31. Two security personnel then escorted the boys to the office. RP 16.

Johnson estimated the fight lasted one to two minutes after he was told what was happening in the hall. RP 26. The students who had been watching did not immediately disperse, but Johnson does

not know if any were late for first-period class. RP 28. By the time Johnson went back inside his classroom, the second bell had already rung. He did not start his class until about 8:05 a.m. RP 16.

The State's second witness was Dathan Turnpaugh, a student at Lake Washington High School. RP 36. Turnpaugh testified he was walking to his first period chemistry class when he came upon the fight in the hallway. RP 38-39. Some students stopped to watch while others continued on their way. RP 40, 46. The boys traded punches until teachers separated them. RP 45. Turnpaugh was in his chemistry classroom before the second bell rang signaling the start of class. RP 47, 49, 54. There were no students remaining in the hallway by the time the second bell rang. RP 56-57.

The final witness, called by the defense, was J.B. RP 69. J.B. was just down the hall from his first-period class when the first bell sounded. RP 71. There had been some tension between J.B.'s friends and O.F.'s friends. J.B. could not recall precisely what triggered his scrap with O.F., but the two engaged in a fistfight until teachers stopped them. RP 72-74. J.B. testified it was not his desire to make it difficult for other students to get to their classes or disrupt students in the hallway, and those that wanted to get to class did so. RP 74-76, 79.

Both at the close of the State's evidence and in closing argument, the defense argued the evidence was insufficient to convict the boys because the State had failed to prove that they specifically intended to disrupt school activities. RP 59-63, 85, 90-92, 95-97.

The court found otherwise, believing that the statute simply required an intentional act that disrupted school activities rather than an intent to disrupt. RP 66, 100-101. Thus, for example, a student who accidentally drops his books in the hallway, thereby causing a delay, is not guilty. But a student who intentionally fights with another, resulting in the same delay, is guilty. RP 66. The court's understanding of the intent element also is reflected in its written findings. CP 12 (finding 10) ("the respondents intentionally fought inside the hallway"); CP 12 (finding 15) ("[t]he respondents' actions of fighting inside the hallway were disruptive").

The trial court found O.F. guilty and imposed local sanctions. CP 9, 18. O.F. timely filed his Notice of Appeal. CP 23.

C. ARGUMENT

THE EVIDENCE IS INSUFFICIENT TO SUPPORT O.F.'S
CONVICTION FOR DISORDERLY CONDUCT.

The elements of disorderly conduct are found at RCW

9A.84.030. As charged in O.F.'s case:

(1) A person is guilty of disorderly conduct if the
person:

.....
(b) Intentionally disrupts any lawful assembly or
meeting of persons without lawful authority;

RCW 9A.84.030(1)(b); CP 1.

The first question for this Court is the meaning of "intentionally disrupts." Statutory interpretation is a question of law this Court reviews de novo. State v. Lilyblad, 163 Wn.2d 1, 6, 177 P.3d 686 (2008). In construing a statute, this Court looks to the Legislature's intent. State v. Carter, 138 Wn. App. 350, 356, 157 P.3d 420 (2008). Where a statute is plain on its face, the Legislature is presumed to mean exactly what it says. Criminal statutes are given a literal and strict interpretation. State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). And to the extent a statute is ambiguous in its requirements, the rule of lenity requires resolution of that ambiguity in the defendant's favor. Carter, 138 Wn. App. at 356-57.

RCW 9A.84.030(1)(b) is plain on its face. A person is guilty only if he “intentionally disrupts” a lawful assembly or meeting of people. “Intentionally” is an adverb modifying “disrupts.” Under RCW 9A.08.010(1)(a), “[a] person acts with intent or intentionally when he or she acts with the objective purpose to accomplish a result which constitutes a crime.” Therefore, to commit disorderly conduct, the defendant must act with the objective to disrupt an assembly or meeting.

The trial court’s contrary interpretation – that the statute only requires an intentional act that causes a disruption – is not supported by the Legislature’s chosen language. Had that been the Legislature’s intent, the statute would not say “intentionally disrupts.” Rather, it would say, “commits an intentional act that disrupts.”

It is not surprising the Legislature declined to draft the statute consistently with the trial court’s interpretation. Had it done so, any intentional act that happened to disrupt others would constitute a criminal offense. In the classroom setting, chewing one’s gum loudly, talking to a classmate during a lecture, texting on a cell phone, or even getting up to use the restroom without permission would warrant a criminal charge. All are intentional acts that disrupt. Such a broad statute would be absurd. See State v. McDougal, 120 Wn.2d 334,

351, 841 P.2d 1232 (1992) (interpretations leading to absurd or unjust results are rejected in favor of those that lead to reasonable ones). The only reasonable interpretation of RCW 9A.84.030(1)(b) is that it requires proof the defendant intended to disrupt a lawful assembly or meeting.

In all criminal prosecutions, due process requires that the State prove every fact necessary to constitute the charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970). Where a defendant challenges the sufficiency of the evidence, the proper inquiry is, when viewing the evidence in the light most favorable to the prosecution, whether there was sufficient evidence for a rational trier of fact to find guilt beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980).

The State presented no proof that O.F. intended to disrupt an assembly or meeting. Rather, he was engaged in nothing more than a typical fistfight in a high school hallway. Each boy intended to get the better of the other; neither intended to disrupt other students or classes, which had not even begun. Some students chose to watch, but those that wanted to get to class did so. And while James

Johnson was late starting his first-period class, there is no evidence this was O.F.'s intent.

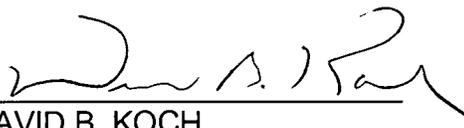
D. CONCLUSION

Neither the statute nor the evidence supports the trial court's conclusion that O.F. intentionally disrupted students in the hallways and classrooms at Lake Washington High School. This Court should reverse and vacate O.F.'s conviction. See State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998) (insufficient evidence requires dismissal with prejudice).

DATED this 8th day of October, 2010.

Respectfully submitted,

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APPENDIX

ORIGINAL

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**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DIVISION**

STATE OF WASHINGTON,

Plaintiff,

No 09-8-03951-0,
09-8-03952-8

vs

JAMES BUHL
DOB 2/18/92,

OSCAR FERNANDEZ-GARCIA
DOB 9/20/92

Respondents

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
PURSUANT TO JuCR 7 11(d)**

THE ABOVE-ENTITLED CAUSE having come on for trial on May 20, 2010, before the undersigned judge in the above-entitled court, the State of Washington having been represented by Jill H Yamamoto, the respondents James Buhl and Oscar Fernandez-Garcia both appearing in person and having been represented by their attorneys, Amy Bowles on behalf of James Buhl and Karri Boyum on behalf of Oscar Fernandez-Garcia, the court having heard sworn testimony and arguments of counsel, and having received exhibits, now makes and enters the following findings of fact and conclusions of law

FINDINGS OF FACT

FINDINGS OF FACT AND CONCLUSIONS OF LAW
PURSUANT TO JuCR 7 11(d) - 1

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I

- 1 On September 29, 2009, 17-year-old James Buhl and 17-year-old Oscar Fernandez-
- 2 Garcia got into a physical fight at Lake Washington High School. The fight occurred in
- 3 the hallway inside of Lake Washington High School which is located in Kirkland,
- 4 Washington
- 5
- 6 Before the fight, the first bell rang at 7:55 a.m. on September 29, 2009 indicating that
- 7 students had five minutes until the first period classes began at 8 a.m.
- 8
- 9 The respondents started physically fighting after the first bell rang at 7:55 a.m.
- 10
- 11 As the respondents fought, a crowd of students gathered around the respondents and
- 12 watched them fight. The crowd of students increased in size as the fight continued.
- 13 Students who were walking through the hallway to their classes stopped and students
- 14 who were located inside of classrooms left their respective classrooms and gathered
- 15 around to watch the fight.
- 16
- 17 Teacher James Johnson left his classroom to break up the fight. When James Johnson
- 18 arrived at the scene of the fight, he saw another female student in the middle of the fight
- 19 trying to stop the respondents from fighting, but the respondents continued to fight.
- 20
- 21 James Johnson yelled at the students making his presence known and ordering them to
- 22 stop fighting. Respondent James Buhl heard Mr. Johnson yell, but he continued to fight.
- 23
- 24 Two additional teachers left their nearby classrooms, and they, together with James
- 25 Johnson, broke up the fight by separating the respondents. When the fight was over, the
- 26 crowd of students dispersed and students went to their first period classes. The teachers

1 who broke up the fight, took the respondents to the administrator's office, and James
2 Johnson returned to his classroom

3 8 James Johnson's first period class started late as a result of the fight

4 9 Before classes begin at Lake Washington High School at 8 a m , students and teachers
5 inside the hallways and classrooms are a lawful assembly of persons When first bell
6 rings at 7 55 a m , there is a particularly high concentration of students in hallways as
7 they make their way to their respective classrooms On September 29, 2009, there was a
8 lawful assembly of persons inside the hallways and classrooms of Lake Washington High
9 School

10 10 On September 29, 2009, the respondents intentionally fought inside the hallway and
11 continued to fight as a crowd of students gathered and increased in size, a student tried to
12 get in between them and break up the fight, and a teacher made his presence known and
13 ordered them to stop fighting

14 11 The students who gathered around the fight knew they were not supposed to loiter in the
15 hallway after the first bell rang at 7 55 a m

16 12 The respondents choose to fight in the hallway instead of taking the fight outside

17 13 Before this incident, respondent James Buhl had seen other fights at school and those
18 fights attracted crowds of students

19 14 The respondents did not have lawful authority to disrupt assembly of persons

20 15 The respondents' actions of fighting inside the hallway were disruptive because a crowd
21 of students gathered around the fight, teacher James Johnson's first period math class
22 started late, and other classes, but not all classes, started late

23 16 These events took place in King County, Washington

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And having made those Findings of Fact, the Court also now enters the following

CONCLUSIONS OF LAW

I

The above-entitled court has jurisdiction of the subject matter and over respondent, James E Buhl, who was born 2/18/92, and respondent Oscar Fernandez-Garcia, who was born on 9/20/92 in the above-entitled cause

II

The State has proven the following elements of Disorderly Conduct, contrary to RCW 9A 84 030(1), respectively, beyond a reasonable doubt

- 1 That on or about September 29, 2009, the respondents James E Buhl and Oscar Fernandez-Garcia did without lawful authority, intentionally disrupt a lawful assembly and meeting of persons, to wit Lake Washington High School
- 2 That the acts occurred in King County, Washington

III

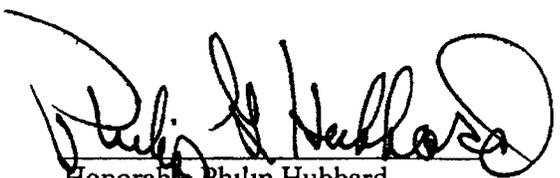
The respondents James Buhl and Oscar Fernandez-Garcia are each guilty of count I of the crime of Disorderly Conduct

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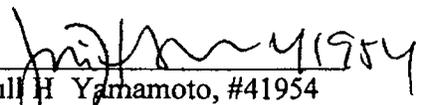
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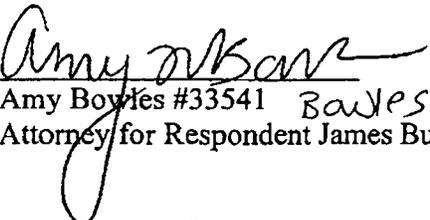
Judgment should be entered in accordance with Conclusion of Law III In addition to these written findings, the Court incorporates all of its oral findings and conclusions as reflected in the record

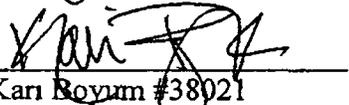
SIGNED this 4th day of June, 2010


Honorab Philip Hubbard

Presented by


Jill H. Yamamoto, #41954
Deputy Prosecuting Attorney


Amy Boyles #33541 *Boyles*
Attorney for Respondent James Buhl


Kari Boyum #38021
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