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JUN 30 2012

King County Prosecutor
Appellate Unit

NO. 68137-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

JEFFREY S. BEASLEY,

Appellant.

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

The Honorable Regina S. Cahan, Judge

BRIEF OF APPELLANT

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JULIA S. RYAN
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A. ASSIGNMENT OF ERROR

The State failed to prove each element of tampering with a witness beyond a reasonable doubt.

Issue Pertaining to Assignment of Error

The State failed to prove the appellant, Jeffrey S. Beasley, attempted to induce a witness to testify falsely, withhold testimony, or absent herself from trial.

B. STATEMENT OF THE CASE

Danitra Powell met Jeffrey S. Beasley in August 2010 and moved into his Renton home in September. 2RP 364-66.¹ By June 2011, Powell had fallen out of love with Beasley because of arguing and fighting. 2RP 411, 465-66. During that month, Powell and some of her school friends gathered at her residence with Beasley for lunch and drinks. 2RP 372. At one point, one of the friends asked the others whether they remembered when a guy at school called them "bitches." 2RP 373.

Although Powell told Beasley the comment was not important, Beasley was offended. He concluded that because Powell was not troubled by the insult, she must have been in a relationship with the guy at

¹ The verbatim report is cited as follows: 1RP – 11/14/11; 2RP – 11/15-17, 11/21-23, 11/28 & 30, 12/23/11; 3RP – 11/29/11.

school. 2RP 373-74. This subject of infidelity angered Beasley and fueled an argument that continued for three days. 2RP 371-74, 376-77.

Finally, things "got physical" on the evening of June 20, when Powell and Beasley began grabbing, pushing and hitting each other. Beasley also choked Powell with both hands around her neck. 2RP 379-81. Powell tried to run away, but Beasley stopped her every time. 2RP 383-85. Powell pleaded for Beasley to stop and grabbed at his hands without success. During this continued struggle, Beasley threatened to kill Powell. 2RP 386-88. An angry Beasley choked Powell periodically and hit her in the face, bit her back, grabbed her arms, and kicked her in the groin area. 2RP 388-90, 414-19, 425-28, 446-47, 453-57.

The confrontation finally ended about 6 a.m. 2RP 390-91. Instead of going to school that day, Powell slept with Beasley until about 5 p.m. 2RP 390-91. When they got up, Beasley took Powell's phone and went through the numbers and recorded messages to try to find the man with whom Powell was, in his mind, having an affair. 2RP 391-92. Afraid Beasley would not find what he was looking for, Powell escaped the house through a bedroom window and ran to a neighbor's home. 2RP 187-88, 392-93, 422, 450-51. She used the neighbor's telephone to call first her

mother for help, then the police. 2RP 189-91, 306-07, 318, 393. Powell told her mother Beasley "had been beating on her." 2RP 307.

Officers arrived within a few minutes. 2RP 192, 201-02, 394. According to a responding officer, Powell was "hysterical," crying and gasping for air. 2RP 202-03. Powell said Beasley "was going to kill" her. 2RP 203. Along with colleagues, the officer searched Beasley's home but no one was there. 2RP 204-05, 394. The officer then returned to Powell. 2RP 207. He observed an injury below Powell's left eye, redness and scratches on her neck, bruising on her legs and arms, and a bite mark on her back. 2RP 203, 211-16. The officer took a statement from Powell. 2RP 208-09, 394-95, 445-47, 453-56.

Powell filed a petition for an order of protection from Beasley the following day. 2RP 253, 396-97, 467. She also gave a recorded statement to the case detective that was consistent with what she had told the responding officer. 2RP 254. Powell moved into her mother's house, but immediately began sending Beasley e-mail messages stating she loved and missed him. 2RP 395-96, 423. She moved back in with Beasley of her own accord a week later. 2RP 395-98.

On July 1, after Powell had moved back in with Beasley, the State charged Beasley with second degree assault (by strangulation) and felony

harassment. CP 1-7. Beasley was arrested, arraigned, and booked into jail on July 12. Supp. CP __ (sub. no. 6, Notice of Case Scheduling Hearing Date, filed 7/12/2011); Supp. CP __ (sub. no. 9, Arrest Warrant, filed 7/20/2011); 2RP 366, 424. On that day the court entered a pretrial domestic violence no-contact order that prohibited Beasley from contacting Powell. Beasley signed and received a copy of the order. Supp. CP __ (sub. no. 7, Domestic Violence No-Contact Order, filed 7/12/2011); 2RP 266-70, 366, 466-67, 496-98.

Beasley and Powell nevertheless continued to have contact. Beasley suggested Powell change her statements. 2RP 399. He asked Powell to say she received her injuries in a fight with another woman. Powell signed a statement to that effect, although it was not true, because she did not want Beasley to be in jail. 2RP 399-400, 431-32. She repeated this statement to police several times. 2RP 287-89, 433-43, 468-73.

During July, Beasley called Powell several times from jail. 2RP 241-48, 334-35, 366-70, 424, 443, 497-504. In those calls, Beasley asked Powell not to appear in court and to collect important documents and copies of court opinions. 2RP 273-74, 283-86, 444, 504-06. As a result, the State filed an amended information, adding a charge of witness

tampering and five counts of violating the no-contact order. CP 11-15, 73-78.

At the resulting trial, Beasley testified he did not fight with Powell or threaten to kill her. 2RP 489-91, 510-11. He was hurt by Powell's failure to tell him someone at school called her a "bitch." 2RP 376-77, 508-09. Beasley could not understand why Powell was "defensive" toward a man who had "disrespected" her. 2RP 480-81, 509, 514-15.

At one point on the night of June 20, Powell sarcastically said she cheated on him. 2RP 481. By this time tired of arguing, Beasley left and went to his niece's house to relax. 2RP 332, 337-38, 481-83, 509, 512. From there he went to his friend Nikita's house to discuss his problem with Powell. He fell asleep there and woke up the next day, June 21, at about noon. 2RP 482-86.

Thinking Powell would be at school, Beasley brought Nikita home with him. When they arrived, however, Powell was home. Before long, the women exchanged words and then fought with each other. 2RP 486-88, 514. Beasley eventually broke up the fight. 2RP 487-88. He neither punched nor choked Powell in the process. Powell ran into the bedroom and locked herself in. By the time Beasley got into the room, Powell had jumped out the window. 2RP 487-90.

During the next couple days, Powell began calling Beasley's niece, Jennifer Beasley, and asking about Beasley. 2RP 491-92. Powell told Jennifer she falsely accused Beasley of causing her injuries. Powell revealed she really fought with a woman Beasley had come home with. 2RP 339-40. Powell said she felt bad and would try to help Beasley. 2RP 340-42.

Only later did Beasley learn Powell had accused him of fighting with her. He denied pressuring Powell into changing her statement to police. He said it was her idea to fix the problem she had caused. 2RP 493-95, 505-08. He admitted calling Powell in violation of the no-contact order. 2RP 496-505, 515-16. During the calls, he told her she did not have to honor the State's subpoena to come to court. He also said if she went to California, the State would not extradite her to testify at trial. 2RP 504-05. Beasley explained he called because he was concerned about his job, his home, and his belongings. 2RP 502.

The jury found Beasley not guilty of second degree assault and felony harassment. CP 121-22. It found him guilty of the lesser crime of fourth degree assault, tampering with a witness, and five counts of violating a no-contact order. CP 117-20, 123-25. The trial court imposed

concurrent 60-month sentences for the felonies and a consecutive, suspended sentence for the assault. CP 126-38.

C. ARGUMENT

THE STATE FAILED TO PROVE WITNESS TAMPERING
BEYOND A REASONABLE DOUBT.

To sustain a conviction for tampering with a witness, the State must prove the accused attempted "to induce" a witness to testify falsely, withhold testimony, or absent herself from trial. RCW 9A.72.120(1); State v. Henshaw, 62 Wn. App. 135, 137-38, 813 P.2d 146 (1991). Because the witness, Powell, was willing on her own to change her story to effectuate Beasley's release from pretrial detention, she needed no inducement to do any of those things. Beasley's suggested changes to Powell's original statements to police, as well as his statement that she need not respond to the State's subpoena, therefore did not constitute an attempt to induce, and the State failed to present sufficient evidence to support the tampering conviction.

Due process requires the State to prove each essential element of a crime beyond a reasonable doubt. State v. A.M., 163 Wn. App. 414, 419, 260 P.3d 229 (2011). In assessing a challenge to the sufficiency of the evidence, a reviewing court views the evidence in the light most favorable to the State. State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009).

The question is whether a rational fact finder could have found the essential elements of the offense beyond a reasonable doubt. State v. Budik, 173 Wn.2d 727, 733, 272 P.3d 816 (2012)

The "to-convict" instruction given to Beasley's jury set forth the following elements for the crime of witness tampering:

(1) that during a period of time intervening between July 7, 2011, through July 31, 2011, the defendant attempted to induce a person to testify falsely or, without right or privilege to do so, withhold any testimony or absent himself or herself from any official proceeding; and

(2) that the other person was a witness; and

(3) that the acts occurred in the State of Washington.

CP 105 (instruction 22) (attached as appendix).

Chapter 9A.72 RCW does not define the word "induce." When a statute provides no definition for a term with an ordinary meaning, resort to a dictionary definition is appropriate. Whidbey Gen. Hosp. v. State, 143 Wn. App. 620, 628, 180 P.3d 796 (2008). The dictionary definition of "induce" is "to move and lead (as by persuasion or influence)." Webster's Third New Int'l Dictionary 1154 (1993); State v. Knutz, 161 Wn. App. 395, 404 n.6, 253 P.3d 437 (2011). Persuasion or influence is the key feature of the definition. Our Supreme Court has found the unit of prosecution for witness tampering "is the ongoing attempt *to persuade* a

witness not to testify in a proceeding." State v. Hall, 168 Wn.2d 726, 734, 230 P.3d 1048 (2010) (emphasis added).

Powell's own testimony establishes she needed no persuasion to change her statements originally made to the responding officer and case detective. Only one day after making the statement to the detective, Powell called and indicated to the detective she "had a conscience" and believed the police did not need to put Beasley in jail. 2RP 432. Six days later -- and still more than one week before the charging period for tampering began -- Powell called the detective and said she was not interested in pressing charges against Beasley. 2RP 432, 444.

Powell explained she later wrote a false statement, in which she adopted Beasley's suggested version of events, because she "felt bad" and "didn't want him to be locked up." 2RP 442. Part of her felt like she had to give the statement. 2RP 443. Powell believed there was a possibility she and Beasley could still work out their problems. She testified, "I'm the only one that knows all the details and everything that happens; so, you know, the Court would just have to take my word for what it is. So that's why I changed it." 2RP 442.

Powell continued speaking with Beasley after he was jailed because she "felt like it was the least" she could do. 2RP 444. She put

money in Beasley's jail account and looked for a place for them to live because she felt like she "owed" him that, because she "put him in a position to where he got arrested." 2RP 447. Furthermore, Beasley was Powell's "sole provider." 2RP 447.

Jennifer Beasley testified Powell was "very hurt" by Beasley's incarceration and stood by him "100 percent." 2RP 337. Powell told Jennifer she was "trying to do anything or everything possible to get him out of the situation he was in." 2RP 340. Powell also disclosed, only a couple of days after the altercation occurred, that she had really sustained her injuries during a fight with a woman. 2RP 339, 342.

This evidence indicates the State failed to prove beyond a reasonable doubt that Beasley attempted to induce Powell to testify falsely, withhold testimony, or absent herself from the proceedings. Beasley's witness tampering conviction should therefore be reversed and dismissed with prejudice.

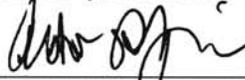
D. CONCLUSION

For the above reasons, this Court should reverse Beasley's conviction for tampering with a witness and remand with an order to dismiss with prejudice.

DATED this 30 day of July, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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APPENDIX

No. 22

To convict the defendant of the crime of tampering with a witness as charged in Count III, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That during a period of time intervening between July 7, 2011, through July 31, 2011, the defendant attempted to induce a person to testify falsely or, without right or privilege to do so, withhold any testimony or absent himself or herself from any official proceeding; and

(2) That the other person was a witness; and

(3) That the acts occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.)	COA NO. 68137-1-I
)	
JEFFREY BEASLEY,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 30TH DAY OF JULY 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] JEFFREY BEASLEY
DOC NO. 747382
WASHINGTON CORRECTION CENTER
P.O. BOX 900
SHELTON, WA 98584

2012 JUL 30 PM 4:45
COURT OF APPEALS
STATE OF WASHINGTON

SIGNED IN SEATTLE WASHINGTON, THIS 30TH DAY OF JULY 2012.

x *Patrick Mayovsky*