

No. 44721-5-II

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

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STATE OF WASHINGTON,

Respondent,

v.

BYRON ISABEL LOPEZ-MAZARIEGOS,

Appellant.

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

The Honorable Erik Price, Judge  
Cause No. 13-1-00060-5

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BRIEF OF RESPONDENT

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Carol La Verne  
Attorney for Respondent

2000 Lakeridge Drive S.W.  
Olympia, Washington 98502  
(360) 786-5540

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether there was sufficient evidence that the defendant intentionally assaulted a police officer.

B. STATEMENT OF THE CASE.

The State accepts the appellant's statement of the procedural and substantive facts.

C. ARGUMENT.

The State presented sufficient evidence to support Lopez-Mazariegos' conviction for third degree assault. Evidence is not insufficient merely because it may be subject to different interpretations.

Lopez-Mazariegos was charged with third degree assault, along with other charges, for striking a police officer. CP 9. The State was required to prove that the touching or striking was done intentionally. CP 26. Lopez-Mazariegos argues that the evidence presented at trial was insufficient to prove that he intentionally struck Olympia Police Officer Charles Gasset. He characterizes the blows which struck the officer's face as the accidental results of his flailing around after being suddenly awakened.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a

reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

“[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.” (Cite omitted.) This inquiry does not require a reviewing court to determine whether it believes the evidence at trial established guilt beyond a reasonable doubt. “Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (Cite omitted, emphasis in original.)

State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

“A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” Salinas, supra, at 201. Circumstantial evidence and direct evidence are equally reliable, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). This court must defer to the trier of fact on issues of

conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). It is the function of the fact finder, not the appellate court, to discount theories which are determined to be unreasonable in light of the evidence. State v. Bencivenga, 137 Wn.2d 703, 709, 974 P.2d 832 (1999).

Officer Gassett testified that he was leaning across the defendant's body, putting the car into park and turning off the ignition, when Lopez-Mazariegos awoke. RP 34.<sup>1</sup> Lopez-Mazariegos looked at the uniformed officer, immediately yelled "No policia," and slapped out with his left fist, striking Gassett on the right cheek. RP 36. A few seconds later he said, "I didn't do anything." RP 37. He also struck Gassett in the face with his right hand. RP 38. Both of these blows occurred while Gossett was the only police officer present; back-up arrived a short time later. RP 39. Eventually three officers were involved, and all three testified that Lopez-Mazariegos constantly struggled to get away from them, tried repeatedly to turn on the ignition and put the car in gear, and held his body such that it was nearly impossible to remove him from the vehicle. See RP 37-43, 67-70, 85-88.

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<sup>1</sup> All references to the Verbatim Report of Proceedings are to the one-volume jury trial transcript.

Lopez-Mazariegos clearly recognized immediately that Gassett was a police officer. His first movement was to strike the officer in the face with his left hand, followed shortly thereafter with a blow with his right hand. The testimony did not support an inference that he was merely flailing around, rather that he was making a concentrated effort to get free of the police, start his car, and get away. There was no testimony indicating that anything he did was accidental. Taking the evidence and the reasonable inferences therefrom in the light most favorable to the State, it amply supported the conclusion that the blows inflicted by Lopez-Mazariegos were intentional and that he knew he was striking a police officer.

The fact that evidence may be interpreted differently does not mean it is insufficient to prove the charges. Defense counsel made the same argument to the jury that is raised on appeal, RP 163-165, and the jury rejected it. The trier of fact determines credibility and chooses how to interpret the evidence. "That multiple, contradictory inferences are possible indicates only that material facts are in dispute. . . . Our system of justice dictates that juries hear the evidence and decide which inference is correct."

State v. Montano, 169 Wn.2d 872, 882, 239 P.3d 360 (2010)

(Justice J. Johnson dissenting).

The testimony given at this trial fully supported the verdict of guilty to third degree assault.

D. CONCLUSION.

The evidence was sufficient to support Lopez-Mazariegos' conviction for assault in the third degree. The State respectfully asks this court to affirm his convictions.

Respectfully submitted this 20th day of November, 2013.

  
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Carol La Verne, WSBA# 19229  
Attorney for Respondent

# THURSTON COUNTY PROSECUTOR

**November 20, 2013 - 1:50 PM**

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