

**NO. 46250-8**

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

TIMOTHY ROHN, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Elizabeth P. Martin

No. 13-1-04802-9

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**Brief of Respondent**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether the State adduced sufficient evidence to prove all of the elements of fourth degree assault when the evidence at trial showed that defendant intentionally and repeatedly struck victim Wilson when she was attempting to prevent defendant from further attacking victim Brown?

B. STATEMENT OF THE CASE.

1. Procedure

The Pierce County Prosecuting Attorney (State) charged Timothy Rohn (defendant) with one count of second degree assault and one count of fourth degree assault for the unprovoked attack against two Western State Hospital employees. CP 16-17; 2RP 56, 91.<sup>1</sup> The case proceeded to a jury trial before the Honorable Elizabeth P. Martin. 2RP 40. Defendant did not testify at trial. 3RP 166. The jury was instructed on the doctrine of transferred intent over defendant's objection. 3RP 182-86.

The jury subsequently could not reach a verdict of second degree assault as charged in count I, but found defendant guilty of the lesser included third degree assault. CP 22-23. The jury found defendant guilty as charged on count II, fourth degree assault. CP 50. The court imposed a

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<sup>1</sup> The State will refer to the sequentially labeled verbatim report of proceedings by the volume number followed by the page number.

high end standard range sentence of twenty nine months on count I, and 364 days on count II, to run concurrent. CP 88, 96; 5RP 255. Defendant filed a timely notice of appeal. CP 99. Defendant does not challenge his conviction for assault in the third degree on appeal. App.Br. at 1.

## 2. Facts

On October 14, 2012, Frederick Brown and Eugenia Wilson, psychiatric security attendants at Western State Hospital, were escorting multiple patients back to their rooms following a religious service. 2RP 56, 59. Brown and Wilson escorted several patients back to their rooms on the fourth floor, passing by defendant's room as they did so. 2RP 96-98. They then returned to the stairwell and proceeded to continue on to other floors with the remaining patients. 2RP 62, 98. As they were entering the stairwell, defendant suddenly burst through the stairwell door and began attacking Brown. 2RP 62-67. Defendant was swinging a pillowcase that contained three Duracell batteries inside, and repeatedly struck Brown on the back.<sup>2</sup> 2RP 50-51, 62-65, 94, 100.

Wilson observed the attack and immediately attempted to separate defendant from Brown. 2RP 100. As Wilson was moving defendant away from Brown, defendant continued to swing and struck Wilson in the chest

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<sup>2</sup> These actions were the basis for count I.

and shoulder several times.<sup>3</sup> 2RP 101-02, 117-19. At trial, Wilson described the attack as “[b]asically, I was in the way of [defendant] getting to who he really wanted, which was Mr. Brown.” 2RP 120.

Wilson suffered a contusion to her ribs, a bruised clavicle, and a hurt rotator cuff as a result of the attack. 2RP 117. Brown was diagnosed with a contusion of the upper back and thigh. 3RP 149.

C. ARGUMENT.

1. THE STATE ADDUCED SUFFICIENT EVIDENCE TO PROVE ALL OF THE ELEMENTS OF FOURTH DEGREE ASSAULT WHEN THE EVIDENCE AT TRIAL SHOWED THAT DEFENDANT INTENTIONALLY AND REPEATEDLY STRUCK VICTIM WILSON WHEN SHE WAS ATTEMPTING TO PREVENT DEFENDANT FROM FURTHER ATTACKING VICTIM BROWN.

The State bears the burden of proving each and every element of a criminal offense beyond a reasonable doubt. *State v. Bennett*, 161 Wn.2d 303, 307, 165 P.3d 1241 (2007). The applicable standard of review 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. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). A challenge to the sufficiency of the

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<sup>3</sup> These actions were the basis for count II.

evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). In considering this evidence, "[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal." *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Appellate courts "must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *State v. Paulson*, 131 Wn. App. 579, 586, 128 P.3d 133 (2006).

Here, defendant was charged and convicted of fourth degree assault for the blows that injured Wilson. CP 50. A person is guilty of assault in the fourth degree if "he assaults another" and the circumstances do not amount to assault in the first, second, or third degree. RCW 9A.36.031(1). Fourth degree assault is not defined by statute, but can be committed in three different ways: (1) intending to inflict bodily injury on another, accompanied with the apparent present ability to do so, (2) intentionally creating in another person reasonable apprehension and fear

of bodily injury, and (3) intentionally committing an unlawful touching, regardless whether physical harm results. *State v. Davis*, 60 Wn. App. 813, 821, 808 P.2d 167, 172 (1991) *aff'd*, 119 Wn.2d 657, 835 P.2d 1039 (1992). A touching may be unlawful because it was neither legally consented to nor otherwise privileged, and was either harmful or offensive. *State v. Garcia*, 20 Wn. App. 401, 403, 579 P.2d 1034 (1978).

The court instructed the jury as follows regarding fourth degree assault:

To convict the defendant of the crime of Assault in the Fourth Degree as charged in Count II, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 14<sup>th</sup> day of October, 2012, the defendant assaulted Eugenia Wilson, and
- (2) That this act occurred in the State of Washington....

CP 38. In the present case, the evidence was sufficient to support defendant's conviction of fourth degree assault against Wilson. Wilson testified that defendant struck her multiple times as he was "swinging back" toward Brown while Wilson attempted to prevent defendant from hitting Brown. 2RP 101. Defendant continued to swing at Wilson even after he had struck her several times. 2RP 101-02, 106, 118. Wilson also sustained multiple injuries as a result of defendant's attack, including a contusion to her ribs, a bruised clavicle, and a hurt rotator cuff. 2RP 117.

A jury could easily conclude that such contact was harmful or offensive, or was done with the intent to create apprehensions and fear of bodily injury. A jury could properly infer that this assault was intentional based on the fact that defendant continued to swing at Wilson multiple times, even after he had already struck her. 2RP 101-02, 106, 118. Therefore, the evidence was sufficient to prove defendant assaulted Wilson.

Defendant alleges that the evidence was insufficient to support defendant's fourth degree assault conviction because the jury found defendant guilty of third degree assault of Brown instead of second degree assault, and as such no intent could be transferred to Wilson. Ap.Br. at 5-6. Defendant's claim fails on several grounds. First, the jury did not unanimously find defendant not guilty of second degree assault; rather, it could not reach a verdict and instead convicted on third degree assault. CP 22-23. Thus, the jury could have easily found that defendant acted intentionally when he assaulted Brown but could not agree on whether defendant inflicted the substantial bodily harm necessary to support a second degree assault conviction. *See* CP 34, 36. Additionally, while third degree assault requires that defendant at least acted negligently, it does not preclude the jury from finding that defendant acted with a higher mental

state of intentionally or knowingly. *See* CP 46. Thus, a jury need not find that defendant *only* acted negligently in order to properly convict defendant.

Finally, the jury need not have relied on the transferred intent doctrine in order to properly convict defendant of fourth degree assault. The doctrine of transferred intent is unnecessary once the requisite mens rea is established for an assault and any unintended victims are assaulted if they fall within the terms and conditions of the statute. *State v. Wilson*, 125 Wn.2d 212, 219, 883 P.2d 320 (1994). As discussed above, there was ample evidence present at trial for the jury to conclude that defendant acted intentionally when he repeatedly struck both Brown and Wilson. Thus, even if the jury found that defendant only intended to assault Brown and not Wilson, the fact that Wilson was also assaulted in the attack is sufficient to support a fourth degree assault conviction under controlling case law. *See State v. Wilson*, 125 Wn.2d at 219.

D. CONCLUSION.

The State adduced sufficient evidence to prove all of the elements of fourth degree assault when the evidence at trial showed that defendant intentionally and repeatedly struck victim Wilson when she was attempting to prevent defendant from further attacking victim Brown. For

the foregoing reasons, the State respectfully requests this Court affirm defendant's conviction and sentence.

DATED: March 17, 2015.

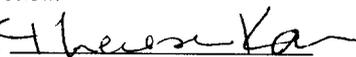
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Certificate of Service:

The undersigned certifies that on this day she delivered by ~~ES~~ mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

3/17/15   
Date Signature

**PIERCE COUNTY PROSECUTOR**

**March 17, 2015 - 1:22 PM**

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