

No. 49415-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

S.T.W.
Appellant.

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

Cause No. 16-8-00104-1

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did sufficient evidence support the court's finding that S.T.W. acted with sexual motivation when he thrust his pelvis against J.L.'s buttocks, and grabbed her breast?

B. STATEMENT OF THE CASE

On February 12, 2016, fourteen year old J.L. and her best friend, Taylor Matthews, went to the home of Matthews' boyfriend, Mandale Tolefree. RP Vol. I at 42. They were joined there by classmates Damone Williams, and the appellant, S.T.W., and together the five drank alcohol and watched television, with witnesses describing S.T.W. as highly intoxicated. RP Vol. I 42-50. As J.L. was laying on the ground, S.T.W. either tripped or jumped on top of her back, and proceeded to "dry hump" her buttocks. RP Vol. I at 51-55, 142-43, 160. Although the length of the dry humping is disputed,¹ both J.L. and Tolefree testified that J.L. was not a willing participant, and she struggled to get away after unsuccessfully telling S.T.W. to stop. RP Vol. I at 54, 142-43. Additionally, J.L. testified that S.T.W. also grabbed her breast during the struggle. RP Vol. I at 54. For his part, S.T.W. seemingly viewed the act as a humorous, laughing throughout. RP Vol. I at 55.

¹ J.L. testified that the contact lasted for five minutes, whereas Tolefree said it was closer to fifteen seconds. RP Vol. I at 53. When considering the length, the trial court noted that to J.L., it probably did feel like five minutes, even if the actual length of time was shorter. RP Vol II at 218.

Following the dry humping, J.L. became upset. RP Vol. I at 56. Somehow, S.T.W. managed to fall down the stairs, and as J.L. stepped over him to leave, he slid his hand up her leg, though he did not reach her “pelvic area.” RP Vol. I at 57-58.

At trial, S.T.W. was convicted of assault in the fourth degree with sexual motivation, and sentenced to twenty days confinement, in addition to one year of community custody. RP Vol. II at 222. When issuing its verdict, the trial court stated “I don’t know any other way in which he would have gotten on top of a reclining [J.L.] without the intent or any other reason why he would have thrust his pelvis without the intent to have sexual contact with her of some kind,” and found this proven beyond a reasonable doubt. RP Vol. II at 219.

C. ARGUMENT

1. The Record Shows That There Was Sufficient Evidence to Support the Trial Court’s Finding of Sexual Motivation.

As his sole point of error, S.T.W. claims that there was insufficient evidence to support the trial court’s finding that he acted with sexual motivation when he “dry humped” J.L.’s buttocks and grabbed her breast.² App. Brief at 5. However, in order to succeed on his claim of insufficient

² It should be noted that under RCW 9.94A.030, crimes committed with sexual motivation may be considered “sex offenses,” but this only applies to felony offenses. Because assault in the fourth degree is a gross misdemeanor, it is not a sex offense, regardless of sexual motivation.

evidence, S.T.W. must show that when viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980); *see also In re Personal Restraint of Gentry*, 137 Wn.2d 378, 410-11, 972 P.2d 1250 (1999) (holding that credibility determinations are left to the triers of fact to decide). Specifically, because this was a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law. *State v. Homan*, 181 Wn.2d 102, 105-106, 330 P.3d 182 (2014). Accordingly, the question before this court is whether the State provided sufficient evidence to enable any rational trier of fact to find that S.T.W.’s pelvic thrusting, and grabbing of J.L.’s breast were done for sexual gratification. RCW 13.40.135; RCW 13.40.020 (““Sexual motivation” means that one of the purposes for which the respondent committed the offense was for the purpose of his or her sexual gratification.”).

In support of its allegation of sexual motivation, the State elicited testimony that S.T.W. thrust his pelvis against or “dry humped” J.L.’s buttocks, and grabbed her breast.³ RP Vol. I at 51-55. Climbing atop a

³ The trial court stated that it found J.L.’s testimony believable. RP Vol. II at 217. Because determinations of credibility are left to the triers of fact to

woman, pelvic thrusting against her pelvic region, and grabbing her breast is an inherently sexual act. A rational trier of fact could certainly find such acts to have been done for the purpose of gratifying sexual desire.

Moreover, while S.T.W. argues that there may be non-sexual reasons for thrusting against a woman's pelvic region or grabbing her breasts, such as an intent to humiliate,⁴ App. Brief at 9, the mere fact that alternative motivations could exist does not prove that no rational trier of fact could find S.T.W.'s actions to be sexually motivated. Simply put, even if reasonable individuals could disagree as to S.T.W.'s true motivations, it was not irrational for the trial court to have found the dry humping of J.L.'s buttocks and groping of her breast to be motivated by the desire for sexual gratification, therefore, the evidence was not insufficient.

Finally, the cases relied upon by S.T.W. are not persuasive, as the current facts are easily distinguishable, due to the inherently sexual nature of S.T.W.'s actions. By contrast, the cases cited by S.T.W. concern acts of

decide, her testimony should be found credible on appeal as well. *In re Gentry*, 137 Wn.2d at 410-11.

⁴ Arguably, publicly performing an inherently sexual act on an unwilling woman for the purposes of humiliating or pranking her is still a sexually motivated act. Delving into such a discussion likely goes beyond the scope of this brief however.

touching.⁵ See *State v. Powell*, 62 Wn. App 914, 917-18, 816 P.2d 86 (1991) (finding insufficient evidence to support conviction for child molestation, because touching a young girl's bottom, thighs and briefly, the front of her underpants were all susceptible to innocent explanations under the circumstances); see *State v. Harstad*, 153 Wn. App. 10, 22-23, 218 P.3d 624 (2009) (finding sufficient evidence of child molestation where defendant rubbed child's privates through her clothes, and made comments about seeing her "pussy"). Because the act of touching is not inherently sexual, it may be susceptible to innocent explanation, and consequently, may require additional evidence to prove underlying sexual motivation. *Powell*, 62 Wn. App at 917-18. However, in the present case, S.T.W. did not simply touch J.L. over her clothes, rather he climbed on top of her, grabbed her breast, and thrust his pelvis against her butt as J.L. struggled to get away. RP Vol. I at 51-55. As previously stated, such acts are inherently sexual, regardless of whether they occurred through clothes or not, and unlike the act of touching, dry humping is far less susceptible

⁵ S.T.W. primarily relies upon cases concerning convictions for sexual molestation. These cases are not wholly irrelevant to topic of special allegations of sexual motivation however, as both sexual motivation and molestation have similar definitions, and require an intent to seek sexual gratification. Nevertheless, the significantly different fact patterns do make them irrelevant in this particular case.

to innocent or non-sexual explanations, thus requiring significantly less additional evidence of intent.

In summation, the trial court addressed this issue best when it stated that “I don’t know any other way in which he would have gotten on top of a reclining [J.L.] without the intent or any other reason why he would have thrust his pelvis without the intent to have sexual contact with her of some kind.” RP Vol. II at 219. S.T.W. has not met his burden of establishing that, when weighing the evidence in the light most favorable to the prosecution, no rational trier of fact could find that S.T.W. acted for the purpose of sexual gratification. *Green*, 94 Wn.2d at 221. Accordingly, it cannot be said that the special allegation of sexual motivation was not supported by sufficient evidence, therefore, this claim must be denied.

D. CONCLUSION

For these reasons, the State asks that this court affirm the finding of sexual motivation.

Respectfully submitted this 20th day of March, 2017.

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CERTIFICATE OF SERVICE

I certify that I served a copy of the Brief of Respondent on the date below as follows:

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I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 20th day of March, 2017, at Olympia,

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CYNTHIA WRIGHT, PARALEGAL

THURSTON COUNTY PROSECUTOR
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