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Court of Appeals
Division II
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IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

Respondent

vs.

CRYSTAL CURTIS

Appellant

ON APPEAL FROM THE SUPERIOR COURT FOR CLARK COUNTY
The Honorable DEREK VANDERWOOD
Superior Court No. 17-1-00405-7

APPELLANT'S OPENING BRIEF

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I. ASSIGNMENTS OF ERROR

1. There was insufficient evidence to convict Ms. Curtis of a third degree assault.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was there sufficient evidence of a harmful or offensive touching when Ms. Curtis tried to escape from a room where she was being detained by a police officer and he suffered no injury as a result of the touching?

III. STATEMENT OF THE CASE

A. Procedural History

Crystal Curtis was charged by an information filed February 23, 2017 with assault in the third degree, RCW 9A.36.031 (g), and assault in the fourth degree, RCW 9A.36.041. CP 1-2.

The case proceeded to trial on August 30 and 31, 2017 before the Honorable Derek Vanderwood and a jury.¹ The jury returned verdicts of guilty on both counts. CP 38, 39. The jury also returned a special verdict finding that the fourth degree assault was committed against a family member. CP 40. The court sentenced Ms. Curtis to 60 days in custody. She was given a concurrent sentence of 60 days on the fourth degree

¹ The VRP is numbered consecutively, and is divided into three volumes. RP I will refer to the verbatim report of trial proceedings held August 30, RP II will refer to the verbatim report of proceedings of trial proceedings held August 30 and 31, 2017. RP III will refer to the VRP of trial proceedings held August 31 and the sentencing proceedings held September 6 and 7, 2017.

assault charge. RP III 560-61, CP 45-56. Ms. Curtis filed a timely notice of appeal. CP 65.

B. Trial Testimony

Hannah Curtis is the sixteen year old daughter of Crystal Curtis, the appellant. At the time of trial she was a junior in high school. RP I 147, 148. On the date of the incident, February 21, 2017, she was late getting home from playing video games at a friend's house. She had been smoking marijuana there. RP I 150-151. She and her mom had an argument when Crystal asked her to take out her dog's poop. RP I 152-154, RP II 195. Hannah started mouthing off back at her mom. Then she went upstairs and locked herself in her room.

Her mom came into the room and they started arguing about the dishes that were in her room. Her mom had asked her several days earlier to get the dishes out of her room. RP I 156, RP II 196. Hannah got emotional and started punching her wall. Her mother started throwing the dishes, and some of the dishes hit the wall behind her. RP I 158, 190.

Hannah got up and started wrestling with her mom. RP I 161. They were wrestling and banging into the walls and made noise so her sister Kharlyn and her sister's friend Toni came into the room to see. She was not sure who had initiated this wrestling. RP I 164, RP II 204. Toni, her sister's friend, was the one who ultimately called the police, without asking Hannah. RP I 162.

Hannah had been punching the wall before the two of them grabbed on to each other. RP II 206-207. Her mother had been yelling at her to stop punching the wall. This was not the first time she punched a wall. She had done it before and injured herself. On this occasion her hand was bruised and swollen from hitting the wall. RP II 207-208.

She told Deputy Cook that her mom had thrown a pile of plates at her but by the time of trial, she thought she was not the target of the plates. Her mom just threw them on impulse. She threw them all at once and they hit different things. RP I 189. Hannah did not have to move out of the way or duck. RP II 201-202. She did tell the Deputy she thought the plates would hit her and that she did have the fear that they were going to hit her. RP I 190.

After the argument with her mom, she left the house and went to her boyfriend's house. RP I 191,192.

Kharlyn Curtis is appellant's older daughter, who was 19 years old at the time of the trial. RP II 255. When she came home on the night of the incident between her mother and sister, her mother had been drinking and was in an "up and down" mood. RP II 255, 257. Her mother was very drunk. She was slurring her words and was very emotional and unstable. RP II 258-59.

When Hannah arrived home from her boyfriend's house, Crystal Curtis started yelling at her. Hannah yelled back, then went to her room and slammed the door. RP II 260. Crystal went up to Hannah's

room and they were yelling again. RP II 261. Then Kharlyn heard a commotion like dishes being thrown against the wall. She and her friend Toni Goodrum went to Hannah's room and saw Hannah and her mom wrestling, holding each other in "a strange sort of fighting." RP II 262. Kharlyn tried to break it up but could not. RP II 262. She and Toni eventually decided to call the police. RP II 266.

Toni Goodrum was at the time of trial the best friend of Kharlyn Curtis. RP II 279. They heard the noise of breaking dishes while they were in Kharlyn's room. RP II 282. Kharlyn went to her sister's room. Toni initially held back and then decided to watch from the doorway. RP II 283. She saw Kharlyn trying to break up the squabble between the other two. She saw Crystal push Hannah into a small table. RP II 283-84.

Robin Ternus was one of several police officers who responded to the 911 call placed by Toni Goodrum. RP II 316. He encountered Crystal Curtis outside of her house on her driveway. He could smell an odor of alcohol on her breath. RP II 319. She was slurring her words. They stayed outside while the other deputies went inside to talk to the other witnesses. RP II 320. Crystal wanted to let her dog out of the truck parked on the driveway. Ternus did not want that to happen, because he was afraid the dog might attack him or Crystal might get a weapon to attack him. RP II 321.

Crystal walked into the garage, and then into the kitchen. RP II 323. She was angry, so Ternus had her walk down the hallway into

another room. While they were there, she told him she had one daughter who was a hippie, one a musician, and one who would not listen. Then she told him again she wanted to get her dog out of her car. RP II 326.

Ternus was standing in the doorway of the room they had moved into, blocking Crystal Curtis's exit path. She pushed him with both hands on his chest to get him out of her way. He pushed her away from him. He grabbed her left arm and "escorted" her to the bed and put her face down on the bed. He yelled for Deputy Harrison to come help him. RP II 326-327, 328, 336, 339. He arrested her for assault. Harrison and Ternus handcuffed her and put her in a patrol car. RP II 329.

Ternus was much bigger than Crystal Curtis. RP II 337. He did not lose his balance when she pushed him. He did not fall down. RP II 338. He was not injured or hurt when she placed her hands on his chest. In fact, he anticipated her motion, and was ready to grab her hands. RP II 338. He pushed her back. RP II 338-39. Because of where he had placed himself in the room, she would have to have some kind of contact with him in order to leave the room. RP II 341. As the deputy put it, "if she was going to get out of that door, she's going to end up pushing me to some degree out of the way." RP II 341.

Deputy Fred Harrison was another of the deputies who responded to the 911 call placed by Toni Goodrum. RP II 303. When he arrived at the house, Crystal was talking with Deputy Ternus outside. Toni Goodrum met him at the door. While he was talking with Toni in the

kitchen, Crystal came in with Ternus. Ternus and Crystal went into another room.

Harrison heard Ternus called his name. RP II 304. He went to the room where they were and saw Ternus was struggling with Crystal. They were in the middle of the room standing up, and Ternus had Crystal's left hand, and was trying to turn her around. She was trying to pull away. RP II 307. Ternus was telling her she was under arrest. Together they handcuffed her. She was not compliant. RP II 305. He did not see any previous physical contact between Crystal and Ternus. RP II 308.

After Crystal had been arrested, Harrison finished up with Toni, and left statements for her and Kharlyn to fill out. RP II 306.

After the state rested, RP II 349, Crystal Curtis took the stand in her own defense. She is a single mother. She works as a carpenter. She has four kids, two of whom, Hannah and Kharlyn lived with her on the date of the incident. RP II 369-70. Hannah is home schooled, but has to go to school one or two days a week. RP II 371.

Crystal had a beer at lunch when she got a phone call with some bad news. RP II 371-372. She had a number of additional beers during the course of the next twelve hours. RP III 394. She fell asleep on the couch and woke up when Hannah came in around 1 AM. RP II 375. They had an argument about Hannah's dog pooping in her room. She thought Hannah might be intoxicated because of the way she looked. RP II 376.

When she went into Hannah's room, there were lots of dishes up there and the room smelled bad. This clean up process had been an ongoing dispute between them. RP II 379. Crystal started picking up the dishes and told Hannah she was grounded. Hannah started punching the wall, something she had done before when upset, to the point of making a hole and injuring her hand. RP II 380–382. Hannah put her fist through the wall the first time, and caused a dent the second time. RP II 383. That's when Crystal tried to stop her. RP II 384. Crystal tried to grab Hannah's hand and dropped a bunch of the dishes she was holding, which got damaged. RP II 380-81. Crystal lost her balance, Hannah "kamakazied" her and they both fell to the floor. That is when Toni and Kharlyn came into the room. RP II 381.

Hannah picked up her back pack as if she was going to leave. Crystal told her she was not going to go, and tossed a plate on the bed, but not at Hannah. RP II 381, 384. It did break, however. RP II 385.

When Crystal became aware that the police had been called, she put her dog in the truck because she was afraid it would bark at the police when they came. RP II 385. She was in the driveway when the police came. RP II 386 . She was blinded by their headlights. RP II 386. She asked the officer to turn off his headlights. RP II 387.

She told Deputy Ternus he was not invited into her house. RP II 386, RP III 403. He insisted he was coming in. RP II 387. She followed

him into the house. There was no one in the kitchen when they came into that room. Toni Goodrum and the other officer were not there. RP II 387.

She and Deputy Ternus went into another room in the house. She sat on a bed; he stood in the door jam. RP III 388. She asked him if she was being detained, and he did not respond. RP III 389, 403. She put one hand on his chest to try to get by him in order to leave the room. RP III 389. She did not tell him she was going to let her dog out of her truck where it was confined. RP III 405. But it was her intention to check on her dog and open a window to give it air. RP III 406. She denied pushing Ternus with two hands. RP III 404. She was trying to squeeze by him. RP III 390. He grabbed her and put her face down on the bed and handcuffed her. RP III 390. The other officer did not assist with the handcuffing process. RP III 404.

C. Sentencing Hearing

The hearing was originally set for Sept. 6, but was rescheduled until Sept. 7, due in part to Ms. Curtis' late arrival to the hearing. RP III 524-527. The court imposed a standard range sentence of 60 days confinement. The misdemeanor assault conviction ran concurrent with the felony charge. RP III 560-61; CP 45 *et seq* and 56 *et seq*. The court waived the non-mandatory financial obligations. RP III 564; CP 49-50.

IV. ARGUMENT AND AUTHORITY

A. There was insufficient evidence of a harmful or offensive touching to sustain a conviction of assault in the third degree.

In order to sustain a conviction, the state must prove every element of an offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 90 S. Ct.1068, 25 L.Ed.2d 368 (1970). The standard of review when a challenge to the sufficiency of the evidence is made on appeal is whether a rational trier of fact could have found all of the elements of the crime beyond a reasonable doubt, giving the benefit of the inferences from the evidence to the non-moving party, the state. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Hoffman*, 116 Wn. 2d 51, 82, 804 P.2d 577 (1991); *State v. Green*, 94 Wn. 2d 216, 616 P.2d 628 (1980).

In order to convict Ms. Curtis of assault in the third degree, the state had to prove Deputy Ternus was on duty, which it did, and that he was “assaulted”, which it did not. RCW 9A.36.031 (g).²

The jury was instructed, consistent with Washington case law, that an assault can be committed in a number of different ways. CP 7 et. seq.; Instruction 8, Appendix A. The state’s theory at trial was apparently that

² (1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

...

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault;

the assault in question here was a “harmful” or “offensive” touching, namely a battery. RP III 456-457.³ Neither term is defined by statute.

It was undisputed by Deputy Ternus that in order for Ms. Curtis to leave the room where they were standing, she would have to have contact with him, since he was blocking the doorway with his body. It was likewise undisputed that he was not injured by Ms. Curtis’ touching him as she tried to exit from the room where he was detaining her. He was not pushed hard enough for him to lose his balance. He did not fall over. He admitted he was much bigger than she was.

Under these circumstances, no reasonable jury could find beyond a reasonable doubt that Ms. Curtis’ attempt to leave the room where she was being isolated was a harmful or offensive touching. The state supplied absolutely no evidence that the touching was “harmful.” There was insufficient evidence that it was “offensive”, given the fact that the deputy was not injured, was not even touched hard enough to lose his balance, and immediately grabbed Ms. Curtis and forcibly detained her and handcuffed her. It was also not offensive in that the deputy was not touched on any sensitive or intimate part of his body. The contact was with his chest and he was in full uniform. The contact was no more offensive than the incidental contact a person might encounter in a crowd of people in a subway platform, all trying to thread their way through a narrow place. The contact was also not intrinsically offensive in the way

³ The prosecutor essentially conceded that the touching was not harmful: “He was honest about the fact it didn’t hurt – he wasn’t making it out to be some big deal. But he was pushed.”

that being spit upon might be. See e.g. *State v. Humphries*, 21 Wn. App. 405, 586 P.2d 130 (1978). A rational jury could not have found that an assault took place under these circumstances.

V. CONCLUSION

While the state unquestionably proved that Deputy Ternus was performing his duties in Crystal Curtis's house, it did not provide sufficient evidence that he was assaulted, since there was insufficient evidence of a touching that was either harmful or offensive. This court should reverse appellant's conviction for third degree assault with directions to the court to strike that portion of the judgment and sentence.

Dated this 13th day of FEBRUARY, 2018

LAW OFFICE OF MARK W. MUENSTER



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Attorney for Appellant Crystal Curtis

INSTRUCTION NO. 8

An assault is an intentional touching or striking of another person, with unlawful force, that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

An assault is also an act, with unlawful force, done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

An assault is also an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

An act is not an assault, if it is done with the consent of the person alleged to be assaulted.

APPENDIX A

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Transmittal Information

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