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Court of Appeals
Division II
State of Washington
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NO. 50990-3-II

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

STATE OF WASHINGTON, Respondent

v.

CRYSTAL ELAINE CURTIS, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.17-1-00405-7

BRIEF OF RESPONDENT

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

KELLY M. RYAN, WSBA #50215
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. The evidence was sufficient to support Curtis' conviction for assault in the third degree.

STATEMENT OF THE CASE

Crystal Curtis (hereafter "Curtis") was charged by information with one count of assault in the third degree and one count of assault in the fourth degree (domestic violence) for incidents that occurred on February 21, 2017. CP 1-2. The listed victim for the assault in the third degree charge was Clark County Sheriff's Deputy Rob Ternus. CP 1.

The case proceeded to a jury trial on August 30, 2017 where several witnesses testified. Deputy Ternus testified that he was dispatched to a reported physical altercation between Curtis and her daughter at Curtis' residence on February 21, 2017. RP 316-17, 325. Curtis was standing in the driveway of the residence when Deputy Ternus arrived. RP 317. Deputy Ternus contacted Curtis and told her why he was there. RP 319. At this time, he could smell a strong odor of intoxicants coming from her, she was slurring her words, and she was swaying and stumbling. RP 319.

Deputy Ternus told two other responding deputies to enter the house to check on the other family members. RP 320. Curtis did not want the deputies to enter the home, so Deputy Ternus told Curtis to stay

outside where he could speak with her. RP 320. During this conversation, Curtis explained what happened, but she also repeatedly complained about the lights from the patrol vehicles and that she wanted to get her dog out of her truck. RP 320-23. Curtis then walked into the house. RP 323. Curtis walked up to another female in the house pointed at her and angrily yelled “yeah go ahead and tell them what I did.” RP 323. Deputy Ternus believed Curtis was intimidating this individual, so he asked Curtis if there was a separate room they could talk in. RP 323.

Curtis walked into a smaller bedroom down a hallway and Deputy Ternus followed her in. RP 324-25. Curtis sat on a bed in the room while Deputy Ternus stood in front of the door while the door was open. RP 325, 333. Deputy Ternus talked with Curtis about the physical altercation between her and her daughter, and Curtis then said she was going to get her dog out of the truck. RP 326. Curtis stood up from the bed, walked to Deputy Ternus, and without saying a word pushed Deputy Ternus in the chest. RP 327-28. It was two-handed full push in the chest, and it was done deliberately to push Deputy Ternus out of the way. RP 328, 340. Deputy Ternus was bigger than Curtis, and he saw the push coming. RP 337-38. He was not hurt from the push. RP 338.

Deputy Ternus then took Curtis’ left arm and put her face down on the bed. RP 327. Curtis was fighting and trying to get her arms beneath

her, and Deputy Ternus called for another deputy's assistance. RP 327. The other deputy arrived and helped handcuff Curtis and she was placed under arrest. RP 327.

Curtis testified at trial. RP 369-413. She testified that Deputy Ternus walked straight into her house after exiting his patrol car. RP 387-88. Curtis testified that no one was near her when she yelled "go ahead tell them what I did" and that she just yelled it up the stairs. RP 402. Curtis testified that they then walked into a small bedroom. RP 388. Curtis testified that she was sitting on the bed while Deputy Ternus was standing in the door jamb. RP 388. She testified that they were not talking about anything, so she brought up her dog locked in the car. RP 388-89. She testified that she then stood up, walked around the room, and then went to move by Deputy Ternus. RP 389. She testified that she said "excuse me – I'm going to get by you" and then put three fingers on Deputy Ternus' chest. RP 389. Curtis testified that she only put one hand on Deputy Ternus and was trying to squeeze past him. RP 389-90. Curtis denied having shoved Deputy Ternus with two hands. RP 404.

The jury returned guilty verdicts on both counts, and found that count two was committed against a family or household member. RP 501-02; CP 38-40. Curtis was sentenced within the standard range. CP 45-64. This timely appeal followed.

ARGUMENT

- I. There was sufficient evidence to support Curtis' conviction for assault in the third degree.

Curtis claims that substantial evidence does not support her conviction for assault in the third degree, because the State did not prove that Curtis assaulted a police officer. Curtis argues that her shoving Deputy Ternus was not an assault. Curtis is incorrect. Curtis' shove was an assault and sufficient evidence was presented to prove Curtis assaulted Deputy Ternus. Her claim fails.

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn.App. 789, 137 P.3d 893 (2006). When determining whether there is sufficient evidence to support a conviction, the evidence must be viewed in the light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 829 P.2d 1068 (1992). If “any rational jury could find the essential elements of the crime beyond a reasonable doubt”, the evidence is deemed sufficient. *Id.*

An appellant challenging the sufficiency of evidence presented at a trial “admits the truth of the State’s evidence” and all reasonable

inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 618 P.2d 99 (1980). The reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn. App. 410, 824 P.2d 533 (1992). In other words, an appellate court does not “reweigh the evidence and substitute [its] judgment for that of” the fact finder. *State v. McCreven*, 170 Wn. App. 444, 284 P.3d 793 (2012) (citation omitted). This admonition is especially true as it pertains to witness credibility since the fact finder was able to “observe[] the witnesses testify first hand.” *Id.* (citation omitted); *State v. Thomas*, 150 Wn.2d 821, 83 P.3d 970 (2004) (noting that “[c]redibility determinations are for the trier of fact and are not subject to review”) (citation omitted). Furthermore, “specifics regarding date, time, place, and circumstance are factors regarding credibility . . .” and, thus, matters a fact finder best resolves. *State v. Hayes*, 81 Wn. App. 425, 914 P.2d 788 (1996) *rev. denied* 130 Wn.2d 1013 (1996).

To convict a defendant of assault in the third degree, the State must prove that the defendant “[assaulted] 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.” RCW 9A.36.031(1)(g). An assault is defined as “an intentional touching or striking of another person that is harmful or offensive, regardless of whether it results in physical injury.” *State v. Jarvis*, 160 Wn. App. 111, 246 P.3d 1280 (2011) (quoting *State v. Tyler*, 138 Wn. App. 120, 155 P.3d 1002 (2007)). A touching is offensive if it offends a reasonable sense of personal dignity. *Kumar v. Gate Gourmet Inc.*, 180 Wn.2d 481, 325 P.3d 193 (2014) (citing Restatement (Second) of Torts §19). The jury was instructed in Curtis’ case that a touching or striking is offensive if it “would offend an ordinary person who is not unduly sensitive.” WPIC 35.50; CP 17.

When viewing the evidence presented at trial in the light most favorable to the State, there was sufficient evidence to prove Curtis assaulted Deputy Ternus. Curtis was sitting on a bed when she stood up, walked directly towards Deputy Ternus, said nothing, and pushed him in the chest. RP 327-28. It was a full push with both hands directly into Deputy Ternus’ chest in an attempt to push him out of the way. RP 328, 338. Curtis made no attempt to move around Deputy Ternus, and her push into his chest was done in a deliberate attempt to push him out of the way. RP 340. Deputy Ternus was not hurt and did not lose his balance, because he was larger than Curtis and he saw the push coming, he prepared himself

for it. RP 337-38. There is no requirement that an assault cause injury, only that it is harmful or offensive. *Jarvis*, 160 Wn.App. at 119. Curtis' deliberate and forceful two-handed push in the chest is a touching that would offend an ordinary person. Being pushed in the chest, as Deputy Ternus was, is not a touching that an ordinary person would find inoffensive in their daily lives. It is not the same type of incidental touching that may occur on a crowded subway platform, contrary to Curtis' argument. It is offensive because a strong push in the chest offends a reasonable sense of personal dignity: an ordinary person never wants to be pushed, let alone forcefully pushed in the chest by two hands. Furthermore, the circumstances which surrounded Curtis' assault on Deputy Ternus also show the push was offensive. Curtis was angry, having angrily yelled at her daughter moments before; she was showing signs of intoxication, and she was being confronted by police about a potential assault she perpetrated against her daughter. Curtis' behavior and demeanor do not support her contention that the push was a polite, inoffensive or inadvertent touching as she attempted to squeeze past Deputy Ternus in a tight space. She deliberately and forcefully pushed him, with both hands, as she directly faced him. Her claim that any touching was incidental to her leaving the room is not reasonable, and was squarely rejected by the jury. Curtis' argument also is asking this Court to

replace the judgment of the fact-finder, and to take all the evidence and inferences that can be drawn therefrom in the light most favorable to *her*, the opposite of the legal standard this Court employs in a sufficiency of the evidence analysis. In consideration of the evidence presented at trial, taken in the light most favorable to the State, a reasonable juror could have found, and did, that the touching was intentional and was offensive and would have offended an ordinary person who is not unduly sensitive. Therefore, there was sufficient evidence to prove that Curtis' push was an assault against Deputy Ternus.

State v. Garcia, 146 Wn. App. 821, 193 P.3d 181 (2008) supports a finding that evidence of a push is sufficient to constitute an assault. In *Garcia*, the defendant was convicted after a bench trial of assault in the third degree for pushing a loss prevention officer, and he appealed his conviction on the grounds that the loss prevention officer did not have lawful authority to detain him. *Id.* at 826-27. The Court agreed and held that the State failed to prove there was a lawful detention and vacated the assault in the third degree conviction. *Id.* at 829. However, the Court went on to find that the State had proven an assault in the fourth degree, and that the trial court's finding that the defendant's push was an assault necessitated remand for the defendant to be sentenced to the lesser degree assault. *Id.* at 830.

Whether or not a push is an assault was not argued in *Garcia*, so it is not controlling in this case. However, it is still persuasive because when the Court in *Garcia* found insufficient evidence for assault in the third degree, it could only direct the trial court to enter a judgement for assault in the fourth degree if it was necessarily proven at trial. *Id.* at 830 (internal citations omitted). Therefore, the Court's holding reflects that the trial court's finding that an assault occurred when the defendant pushed the loss prevention officer was correct. This shows that a push that is either harmful or offensive, or both, is an assault and supports the jury's finding below that Curtis' push of Deputy Ternus constituted an assault.

Taking all the evidence in the light most favorable to the State and drawing inferences most strongly against Curtis, the State presented sufficient evidence that Curtis assaulted Deputy Ternus when she pushed him. Her claim fails.

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CONCLUSION

The State respectfully asks this Court to affirm Curtis' conviction.

DATED this 16 day of April, 2018.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By: 
KELLY M. RYAN, WSBA #50215
Deputy Prosecuting Attorney
OID# 91127

CLARK COUNTY PROSECUTING ATTORNEY

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Transmittal Information

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