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No. 51198-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

DANIEL SPARKS JR.,

Appellant.

BRIEF OF RESPONDENT

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I. STATE'S RESPONSE TO ASSIGNMENT OF ERROR

Sparks' conviction should be affirmed because:

- (1) There was sufficient evidence for the jury to find Sparks assaulted a police officer by grabbing and pulling the officer backwards while he was in the process of arresting another individual.

II. ISSUES PERTAINING TO THE STATE'S RESPONSE TO ASSIGNMENT OF ERROR

- A. **TAKEN IN THE LIGHT MOST FAVORABLE TO THE STATE, WAS THERE SUFFICIENT EVIDENCE FOR THE JURY TO FIND THAT SPARKS ASSAULTED A POLICE OFFICER?**

III. STATEMENT OF THE CASE

On June 24, 2017, at 8:53 p.m., Kayla Sparks¹ called 911 and said she would not explain what was going on, but she needed “to get me and my children out of here.” RP1 at 75, 77, 100, 164; RP2 at 10. A male in the background of the call stated: “F*** you, woman.” RP1 at 77. Kayla then stated: “Please. Probably have to send a police officer here so I can get my children out of here, please.” RP1 at 77.

Officers from the Longview Police Department responded to the call at 3128 Garfield Street in Longview. RP1 at 75, 100, 119, 140, 156. When they arrived, Kayla was standing in the street physically shaking, crying, and screaming: “I need to get my kids out of the house.” RP1 at

¹ Kalya Sparks, her husband Daniel Sparks III, and the Appellant, Daniel Sparks Jr., all share the same last name. To avoid confusion, hereinafter Kayla Sparks will be referred to as “Kayla.”

78, 103. Kayla's husband, Daniel Sparks III,² then exited the house and screamed "Don't lie to them," and pointed at Kayla. RP1 at 79-80. Daniel told Kayla to keep her mouth shut. RP1 at 121. Daniel yelled at the police, saying, "You f***ing police," and calling them "f***ing faggots." RP1 at 104-05. Daniel told the police they should not be there because it was not a domestic violence issue. RP1 at 104.

Officer Adam Surface observed scratch marks on Daniel's arm, told him to calm down, and asked him, "What's going on?" RP1 at 80. Daniel then turned and headed back toward the house. RP1 at 80-81.

Officer Surface was concerned that Daniel might barricade or arm himself inside the house or access a weapon. RP1 at 81. Officer Surface had not yet observed children and was concerned about their safety. RP1 at 81. Because of these concerns, Officer Surface told Daniel not to reenter the house. RP1 at 81. Daniel disregarded this instruction and proceeded to walk back towards the house and up a ramp that led to the front porch where the front door was open. RP1 at 81, 105. Officer Surface attempted to detain Daniel to prevent him from entering the house. RP1 at 82. Daniel resisted Officer Surface's efforts to detain him. RP1 at 82.

² Hereinafter Daniel Sparks III will be referred to as "Daniel."

Officer Ralph Webb was behind Officer Surface and assisted him in attempting to detain Daniel. RP1 at 82. The two officers struggled with Daniel at the top of the ramp where it met the front porch. RP1 at 82-83, 107, 158. The officers attempted to place Daniel in handcuffs. RP1 at 83. Officer Webb had his back to the descending ramp. RP1 at 85. Officer Surface was facing down the descending ramp. RP1 at 85.

The Appellant, Daniel Sparks Jr.,³ aggressively stomped up the ramp toward the officers and his son Daniel. RP1 at 86, 109, 124. Officer Surface yelled at Sparks: “Get back or you’ll be arrested[.]” RP1 at 86, 109. Sparks disregarded this command and continued up the ramp. RP1 at 86. Sparks then grabbed Officer Webb from behind by the shoulders with both hands. RP1 at 86-87, 110, 143. As Sparks was in the process of grabbing him, Officer Webb felt Sparks strike the right side of his head. RP1 at 110, 114. Sparks pulled Officer Webb backward, trying to separate him from his son. RP1 at 87, 110-11, 124, 144.

Officer Webb looked backward and saw that the person pulling him was Sparks. RP1 at 110. Amy Boultinghouse, a ride-along passenger of Officer Webb’s, also observed Sparks pulling Officer Webb. RP1 at 118-19, 133. Officer Matt Hartley also observed Sparks grab and pull Officer Webb from behind. RP1 at 144.

³ Hereinafter Daniel Sparks Jr. will be referred to as “Sparks.”

As a result of being struck, Officer Webb suffered a cut that bled from the back of his head. RP1 at 114. Officer Webb also later felt pain in the right shoulder that Sparks had grabbed. RP1 at 115. During his attempt to arrest Daniel, Officer Webb was using his arms and was vulnerable to being pulled from behind. RP1 at 115-16. Officer Webb's gun, knife, taser, and OC spray were exposed from behind. RP1 at 115. Officer Webb did not desire to be pulled from behind by Sparks. RP1 at 116.

Officer Hartley removed Sparks from Officer Webb and threw him through the railing. RP1 at 88, 146. Sparks held up a two-by-four from the broken railing like a baseball bat. RP1 at 90, 125, 127, 147-48. Officer Hartley told Sparks to put it down. RP1 at 128, 151-52. Sparks refused to put down the two-by-four. RP1 at 128-29, 151-52. Officer Hartley unholstered his pistol. RP1 at 90, 128, 151. Sparks' wife came to him and pleaded with him to put down the two-by-four. RP1 at 129, 152. Eventually, Sparks' wife convinced him to put down the two-by-four. RP1 at 129, 152.

Daniel was placed in handcuffs. RP1 at 90. Sparks again came up the ramp at the officers. RP1 at 90. Officer Surface placed Sparks under arrest. RP1 at 91. Sparks resisted and Officer Webb and Officer Hartley assisted in arresting him. RP1 at 91.

Sparks was charged with two counts of assault in the third degree and one count of obstructing a law enforcement officer. RP2 at 21. The jury found Sparks guilty of the assault in the third degree against Officer Webb and obstructing a law enforcement officer. RP2 at 94. The jury found Sparks not guilty of assault in the third degree against Officer Hartley. RP2 at 94.

IV. ARGUMENT

A. **TAKEN IN THE LIGHT MOST FAVORABLE TO THE STATE, THERE WAS SUFFICIENT EVIDENCE FOR THE JURY TO FIND SPARKS ASSAULTED A POLICE OFFICER.**

Taken in the light most favorable to the State, there was sufficient evidence for the jury to find Sparks assaulted a police officer who was performing his official duties. The Washington Supreme Court has stated:

When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. A claim of insufficiency admits the truth of the State's evidence and all inferences that can be drawn therefrom.

State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Sparks challenges the sufficiency of the evidence as to his assault of Officer Webb.⁴ When the evidence is considered in the light most favorable to the

⁴ Sparks cites the correct standard of review: "The test for determining the sufficiency of the evidence 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.'" *Appellant's Brief* at 10 (quoting *Jackson v. Virginia*, 443

State, there was sufficient evidence for the jury to find Sparks assaulted Officer Webb.

When determining the sufficiency of evidence, the 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 necessary facts to be proven beyond a reasonable doubt.” *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). At trial, the State has the burden of proving each element of the offense beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). However, a reviewing court need not itself be convinced beyond a reasonable doubt, *State v. Jones*, 63 Wn. App. 703, 708, 821 P.2d 543, *review denied*, 118 Wn.2d 1028, 828 P.2d 563 (1992), and 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, *review denied*, 119 Wn.2d 1011 (1992).

U.S. 307, 334, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). However, he confuses this standard with language from cases that did not involve its application. *See, e.g., Appellant's Brief* at 9-10 (Without providing a specific page number, Sparks cites *State v. Moore*, 7 Wn. App. 1, 499, P.2d 16 (1972) to conflate “substantial evidence” supporting a trial court’s ruling on identification testimony with sufficiency of the evidence. *Moore* involved the admissibility of a victim’s in-court identification testimony, constitutional harmless error, and whether the trial court abused its discretion in refusing to permit a defense expert to testify. *See id.* at 3-6. *Moore*’s only use of “substantial evidence” concerned the trial court’s oral ruling on a motion to suppress. *See id.* at 6.).

For purposes of a challenge to the sufficiency of the evidence, the appellant admits the truth of the State's evidence. *Jones*, 63 Wn. App. at 707-08. "In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence." *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). "Nothing forbids a jury, or a judge, from logically inferring intent from proven facts, so long as it is satisfied the state has proved that intent beyond a reasonable doubt." *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). All reasonable inferences must be drawn in the State's favor and interpreted most strongly against the defendant. *State v. Joy*, 121 Wn.2d 333, 338-39, 851 P.2d 654 (1993).

Washington follows the common law definition of assault: "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." *State v. Villanueva-Gonzalez*, 180 Wn.2d 975, 982, 329 P.3d 78 (2014) (emphasis removed). "Assault is, among other things, an unlawful touching." *State v. Thomas*, 98 Wn. App. 422, 424, 989 P.2d 612 (1999). "[A] touching may be unlawful because it was neither legally consented to nor otherwise privileged, and was either harmful or offensive." *Id.* (quoting *State v. Garcia*, 20 Wn. App. 401, 403, 579 P.2d 1034 (1978)). "[A] touching is 'offensive' if it 'would

offend an ordinary person who is not unduly sensitive.” *State v. Stevens*, 158 Wn.2d 304, 315, 143 P.3d 817 (2006) (quoting WPIC 35.50 in a parenthetical to explain the definition of “offensive”).

“During the process of a lawful arrest, an arrestee or an interested third party may not use force against the arresting officer unless the arrestee can show he or she was in actual danger of serious injury.” *State v. Valentine*, 75 Wn. App. 611, 616, 879 P.2d 313 (1994), *affirmed*, 132 Wn.2d 1, 935 P.2d 1294 (1997). Moreover, “[t]he use of force to prevent even an unlawful arrest which threatens only a loss of freedom is not reasonable.” *State v. Goree*, 36 Wn. App. 205, 209, 673, P.2d 194 (1983), *review denied*, 101 Wn.2d 1003 (1984). With regard to an assault of a law enforcement officer, “RCW 9A.36.031(1)(g) includes assaults upon law enforcement officers in the course of performing their official duties, even if making an illegal arrest.” *State v. Mierz*, 127 Wn.2d 460, 479, 901 P.2d 286 (1995). The Supreme Court has explained:

Finally, we also associate ourselves with Judge Learned Hand, who said, ‘The idea that you may resist peaceful arrest—and mind you, that is all it is—because you are in debate about whether it is lawful or not, instead of going to the authorities which can determine, seems to me not a blow for liberty but, on the contrary, a blow for attempted anarchy.’

State v. Valentine, 132 Wn.2d 1, 20, 935 P.2d 1294 (1997) (quoting 35 A.L.I.PROC. 254 (1958)). “To endorse resistance by persons who are

being arrested by an officer of the law, based simply on the arrested person's belief that the arrest is unlawful, is to encourage violence that could, and most likely would, result in harm to the arresting officer, the defendant, or both." *Id.* at 21.

In *State v. Craven*, 67 Wn. App. 921, 928, 841 P.2d 774 (1992), Craven challenged the sufficiency of the evidence supporting his assault conviction for kicking a police officer who was arresting him. After Craven was informed by police he was under arrest, two officers struggled to place Craven in handcuffs, and all three of them fell to the ground. *Id.* at 923. As the officers struggled on the ground with Craven, a third officer observed that Craven's legs were "flopping around and kicking." *Id.* at 923-24. The officer knelt down on Craven's legs to restrain him. *Id.* at 924. The officer "caught one of Craven's feet on the right side of [his] head[,]'" causing an abrasion behind his ear and nearly knocking his glasses off. *Id.* The officer also testified he had "no idea" whether Craven had seen him at that point. *Id.* at 929. Taken in the light most favorable to the State, the Court of Appeals found this evidence was sufficient to support an assault of the officer, stating: "A reasonable fact-finder could conclude that Craven knew someone was trying to restrain his legs, and that he kicked with the intent to evade arrest and also to touch or strike that person." *Id.*

Here, as in *Craven*, when the evidence is considered in the light most favorable to the State, there was sufficient evidence for the jury to find Sparks assaulted Officer Webb. The trial court correctly instructed the jury that:

An assault is an intentional touching or striking of another person 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.

RP2 at 53. Despite being warned by Officer Surface that if he did not stay back he would be arrested, Sparks stormed up the ramp, intentionally grabbed Officer Webb with both hands, and pulled him back by his shoulders.

Under these circumstances, the jury could have found this was an intentional touching that was offensive. Officer Webb was struggling to control Sparks' son. As a police officer performing his official duties, Officer Webb was required to assist in the detention of Daniel. Because his arms were engaged in controlling Daniel, he was vulnerable to anything behind him. When Sparks pulled Officer Webb from behind, this hindered him from performing his duties as a police officer. It also caused him to fear Sparks would access his weapons. And, Officer Webb testified he did not want to be touched in this manner. Considering the evidence, it is most reasonable to conclude the jury found Officer Webb

credible about not wanting to be grabbed and pulled by Sparks, and that he was not being unduly sensitive in this desire.

The jury could also could have found this was an intentional touching that was harmful. The most reasonable inference from the evidence was that, as Sparks was in the process of reaching for Officer Webb's shoulders, he cut Officer Webb in the back of the head. The jury could have inferred Sparks' thumbnail cut Officer Webb's head as he reached for his shoulders, or that Sparks struck Officer Webb's head with his knuckle or a ring. Further, after Sparks pulled on him, Officer Webb experienced pain in his right shoulder. It was reasonable for the jury to infer that by grabbing and pulling on Officer Webb, Sparks caused this shoulder pain.

Sparks argues for insufficient evidence because Officer Webb did not see Sparks strike his head and his shoulder pain could have been caused by something other than Sparks pulling on his shoulders. However, this ignores that the evidence of Sparks grabbing and pulling Officer Webb by the shoulders was, on its own, sufficient evidence to support his conviction. Moreover, both of Sparks' arguments fail.

Sparks first asserts there was insufficient evidence because no witness visually observed Officer Webb get struck in the head, and Officer Webb felt but did not see Sparks strike him in the head. *Appellant's Brief*

at 12. Here, Sparks fails to consider that the jury was permitted to consider both direct and circumstantial evidence in reaching its decision, and the evidence permitted the jury to infer Sparks struck Officer Webb's head while intentionally assaulting him. Multiple witnesses observed Sparks reach toward Officer Webb's shoulders and pull him from behind. The back of Officer Webb's head was in the vicinity of the back of his shoulders. Just prior to being pulled, Officer Webb felt his head being struck, and he looked back and saw that Sparks was the person pulling him. Afterward, Officer Webb had a cut on the back of his head. Thus, through a combination of direct and circumstantial evidence, the jury could have found Sparks intentionally assaulted Officer Webb and in the process cut the back of his head.

Sparks also asserts that the pain in Officer Webb's shoulder came from a source other than his pulling on Officer Webb's shoulders. *Appellant's Brief* at 13. This claim fails to consider the evidence in the light most favorable to the State. Multiple possible causes of an injury do not make a single one of those causes insufficient evidence.

Sparks' arguments also both imply that injury is required for an assault. This ignores that an intentional touching that is harmful or offensive is an assault, "regardless of whether any physical injury is done[.]" *Villanueva-Gonzalez*, 180 Wn.2d at 982. Further, even if the

jury did not find he caused the injury to Officer Webb's head or shoulder, there was still sufficient evidence for the jury to find him guilty. There was sufficient evidence for the jury to find Sparks intentionally grabbed Officer Webb and pulled his shoulders and that such touching was both harmful and offensive. Thus, when the evidence is considered in the light most favorable to the State with all inferences drawn most strongly against Sparks, there was sufficient evidence for the jury to find him guilty of assault in the third degree.

V. CONCLUSION

For the above stated reasons, Sparks' conviction should be affirmed.

Respectfully submitted this 14th day of August, 2018.



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CERTIFICATE OF SERVICE

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on August 14th, 2018.



DAVID PHELAN

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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