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Court of Appeals
Division II
State of Washington
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No. 51998-4-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

DANIKA LIGHTLE,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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I. ISSUES

- A. Did the State present insufficient evidence to sustain Lightle's conviction for Assault in the Third Degree?
- B. Did the trial court improperly impose discretionary legal financial obligations on an indigent defendant due to the 2018 legislative amendments to the legal financial obligations statutes?

II. STATEMENT OF THE CASE

On March 24, 2018, Sergeant Clary and Officer Summers from the Centralia Police Department responded to a neighbor dispute at the Harrison Avenue apartment complex. RP 15-16, 40-42; CP 5. There was a possible criminal trespass complaint between two neighbors. RP 42; CP 5. The allegation was an intoxicated adult in one apartment had entered an adjacent apartment without permission and scolded children who were present without adult supervision. RP 18-19, 43.

Lightle was one of the adults at the apartment and was willing to speak with officers. RP 19-20, 44; CP 5. Sergeant Clary spoke to Lightle for a period of time, broken up by interruptions. RP 21-22. While Sergeant Clary was speaking with Lightle, another woman was arrested by officers who had arrived on the scene. RP 21-22; CP 5.

When the other woman was arrested, everyone else, and in particular, Lightle, became upset over the arrest. RP 22-23; CP 5.

Lightle began to demand the officers take her to jail. RP 23, 44; CP 5. Lightle had a friend who attempted to get between Lightle and the officers. RP 24. Lightle pushed her friend. RP 24.

Officer Summers separated Lightle from her friend and informed Lightle she was not going to jail. RP 24-25; CP 5. Officer Summers told Lightle they were going to leave the scene and Lightle needed to go back to her apartment. RP 25.

Lightle insisted she did not want her friend to go to jail alone. RP 25. Lightle walked over to Sergeant Clary's patrol car, opened up the rear door, and attempted to get inside the vehicle. RP 25, 44; CP 6. Officer Summers grabbed Lightle's arm, guided her out of the patrol car, and told her she was not going to jail. RP 26, 44; CP 6. Lightle turned towards Officer Summers and shoved him in the chest with enough force to make his body twist. RP 26-27, 44; CP 6. Lightle was placed under arrest for assaulting Officer Summers and taken to jail. RP 28; CP 6.

On March 24, 2018, the State charged Lightle by Information with one count of Assault in the Third Degree. CP 1-2. Lightle elected to waive her right to have her case tried to a jury. CP 3. Lightle testified she had merely touched Officer Summers and had not intended to hurt him. RP 59-60. Lightle was convicted as charged.

CP 6. Lightle was sentenced as a first time offender to five days in jail. CP 8-15. Lightle was ordered to pay legal financial obligations including \$50 for attorney fees and \$200 filing fee. CP 11. Lightle timely appeals her conviction and sentence. CP 16.

The State will supplement the facts as necessary throughout its argument below.

III. ARGUMENT

A. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUSTAIN THE TRIAL COURT'S FINDING THAT LIGHTLE COMMITTED THE CRIME, ASSAULT IN THE THIRD DEGREE.

Contrary to Lightle's assertion, the State presented sufficient evidence of Lightle's intent to commit assault. Lightle argues the State did not present sufficient evidence to sustain the trial court's finding of guilty for her conviction for Assault in the Third Degree because the State failed to present evidence Lightle intended to cause bodily harm when she shoved the officer. Brief of Appellant 5-6. This Court should find the State presented sufficient evidence to sustain the trial court's finding of guilty for Assault in the Third Degree and affirm the conviction.

1. Standard Of Review.

Sufficiency of evidence following a bench trial is reviewed for "whether substantial evidence supports the challenged findings of

fact and whether the findings support the trial court's conclusions of law." *State v. Smith*, 185 Wn. App. 945, 956, 344 P.3d 1244 (2015) (citation omitted). Unchallenged findings are verities on appeal. *State v. Lohr*, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011).

2. The Trial Court's Conclusion That Lightle Intentionally Assaulted Officer Summers, Thereby Committing Assault In The Third Degree, Is Supported By Substantial Evidence.

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, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 893 (2006). 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, 781, 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, 638, 618 P.2d 99 (1980).

"Substantial evidence is evidence sufficient to persuade a fair-minded, rational person that the findings are true." *Smith*, 185 Wn. App. at 956 (citation omitted). The reviewing court defers to the trier

of fact on issues regarding witness credibility, conflicting testimony, and persuasiveness of the evidence presented. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

Lightle did not assign error to any of the findings of fact or conclusions of law.¹ Given Lightle is arguing insufficient evidence to support her conviction, the State will work under the assumption Lightle neglected to assign error to conclusions of law 2.2 and 2.3. The State, however, will not make any assumptions regarding the findings of fact, and therefore failure to assign error make them verities on appeal. *Lohr*, 164 Wn. App. at 418; See CP 5-7.

To convict Lightle of Assault in the Third Degree, the State was required to prove, beyond a reasonable doubt, that Lightle, on or about March 24, 2018, in the County of Lewis, did intentionally assault a law enforcement officer or other employee of a law enforcement agency performing his official duties at the time of the assault. RCW 9A.32.031(1)(a); RCW 9A.56.031(1)(g); CP 1. The State alleged Lightle assaulted Officer Stephen Summers. CP 1.

Therefore, the State had to prove an assault occurred. Assault is not defined by statute, therefore the common law definition of

¹ The State has attached the Findings of Fact and Conclusions of Law as Appendix A.

assault is applied. The Washington State Supreme Court has cited WPIC 35.50 as the common law definition of assault,

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.

State v. Villanueva-Gonzalez, 180 Wn.2d 975, 982-83, 329 P.3d 78 (2014), *citing State v. Smith*, 159 Wn.2d 778, 781, 154 P.3d 873 (2007). Further, a touching that is either harmful or offensive, and “was neither legally consented to nor otherwise privileged” may be unlawful. *State v. Jarvis*, 160 Wn. App. 111, 118, 246 P.3d 1280, review denied, 171 Wn.2d 1029 (2011). (internal quotations and citations omitted). An assault can also be accomplished by attempting to inflict bodily injury upon another person or putting another person in apprehension of harm, whether or not one intends to actually inflict or is capable of inflicting said harm. *Jarvis*, 160 Wn. App. at 117-18.

Lightle argues an overly narrow version of the definition of assault from *State v. Williams*, 159 Wn. App. 298, 307, 244 P.3d 1018, *review denied*, 171 Wn.2d 1025 (2011). Brief of Appellant at 5-6. Lightle asserts she must have intended to cause bodily harm

when she shoved Summers, which according to Lightle she presented uncontroverted evidence to the contrary. *Id.* Lightle ignores the broader common law definition of assault, an intentional touching or striking that is harmful or offensive, regardless of whether Lightle injured Summers. *Villanueva-Gonzalez*, 180 Wn.2d at 982-83. This striking or touching must be such that it would offend an ordinary person who is not unduly sensitive. *Id.* Therefore, the test in this case is not whether Officer Summers was offended, but rather whether an ordinary person would have been offended had they been shoved by Lightle.

The State had to prove Lightle acted intentionally. Intent is defined as, “[a] person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.” RCW 9A.08.010(1)(a). Officer Summers testified Lightle stepped towards him, stabled her feet, and shoved Officer Summers with her right arm in the chest with enough force to turn him. RP 45; CP 6. Sergeant Clary testified Lightle turned towards Officer Summers and with one hand pushed Officer Summers backwards with enough force to make his body twist. RP 26-27; CP 6.

Lightle testified she merely touched Officer Summers. RP 59-60. Lightle explained she was told if she touched Officer Summers she would go to jail, which was her objective. RP 59. Officer Summers denied having such a conversation with Lightle. RP 63, 64. This court defers to the trial court, as the trier of fact, regarding conflicting testimony from witnesses and their credibility. *Thomas*, 150 Wn.2d at 274-75. The trial court, pursuant to its Findings of Fact and Conclusions of Law, did not find Lightle credible. CP 5-7.

There was substantial evidence presented to persuade a rational, fair minded person the findings entered by the trial court are true. This evidence supports the trial court's conclusions of law finding Lightle guilty of Assault in the Third Degree. When viewing the evidence with all reasonable inferences drawn in favor of the State, Lightle intended to shove Officer Summers in the chest. This shove was with enough power to force his body to twist from its position. Such an action would cause an ordinary person, including a law enforcement officer, who is not unduly sensitive to be offended. There has been no argument Officer Summers was not a law enforcement officer performing his official duties at the time of this incident. Therefore, the State proved Lightle committed Assault in

the Third Degree as charged and this Court should affirm the trial court's finding of guilt.

B. THE RECORD IS NOT SUFFICIENT TO ASCERTAIN IF LIGHTLE IS INDIGENT PER SE, THEREFORE, THIS COURT SHOULD REMAND FOR THE TRIAL COURT TO DETERMINE IF THE LEGAL FINANCIAL OBLIGATIONS WERE PROPERLY IMPOSED.

Lightle asserts, without any documentation to substantiate her claim, she is indigent per se and therefore, the trial court incorrectly imposed the criminal filing fee and court appointed attorney fee. Brief of Appellant 6-7. The record presented suggests Lightle may indeed be indigent pursuant to RCW 10.101.010(3)(c), but without more information regarding Lightle's income, the State cannot simply concede the matter. RP 83-85.

The 2018 amendments to the Legal Financial Obligation statutes became in effect on June 7, 2018. Laws of 2018, ch. 269, §§ 6, 17, 18. Further, the amendment also applies to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. *State v. Ramirez*, 191 Wn.2d 732, 747-49, 426 P.3d 714 (2018). Therefore, Lightle receives the benefit of the amendments that apply to her, which in Lightle's case it is unclear if any apply.

Lightle asserts she is indigent because she was indigent for counsel purposes, both at trial and for appeal, and therefore she is entitled to have the remaining discretionary legal financial obligations stricken (\$200 filing fee and \$50 court appointed attorney fee). Brief of Appellant 7-8. This is simply not true. Per the statutory amendments of 2018, the filing fee is no longer a nondiscretionary legal financial obligation if a defendant qualifies for indigency under RCW 10.101.010(3)(a)-(c). RCW 36.18.020(h). Further, only if a defendant is indigent “per se” under RCW 10.101.010(3)(a)-(c) shall the sentencing court not order a defendant to pay costs. RCW 10.01.160(3).

(3) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level;

RCW 10.101.010(3)(a)-(c).

The record is lacking regarding Lightle's indigency. Simply having court appointed counsel only falls under RCW 10.101.010(3)(d), not the subsection that exempts a defendant from paying the filing fee or paying the cost of her court appointed counsel.

The State requests this Court remand Lightle's matter back to the trial court so a full inquiry regarding Lightle's income may be made. Once the record is complete, if Lightle falls under RCW 10.101.010(3)(c), the State will concede she is not required to pay the \$200 filing fee or the \$50 attorney fee imposed by the trial court.

IV. CONCLUSION

The State presented sufficient evidence to sustain Lightle's conviction for Assault in the Third Degree. The State requests this Court remand Lightle's matter back to the trial court for a complete inquiry regarding Lightle's income to determine if discretionary legal financial obligations were properly imposed.

RESPECTFULLY submitted this 28th day of January, 2019.

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by: _____
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Appendix A

Finding of Fact and Conclusions of Law



FILED
Lewis County Superior Court
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JUN 11 2018

Scott Tinney, Clerk

By _____, Deputy

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

DANIKA MARIE LIGHTLE,

Defendant.

No. 18-1-00226-21

FINDINGS OF FACT AND CONCLUSIONS
OF LAW (BENCH TRIAL)

This matter came on for a bench trial on June 05, 2018, before the undersigned Judge. The State was represented by Senior Deputy Prosecuting Attorney, J. Bradley Meagher. The Defendant was present and represented by her attorney, Shane O'Rourke. The Court heard the testimony from the two officers involved and the defendant.

NOW, THEREFORE, the Court makes the following findings:

I. FINDINGS OF FACT.

1.1. On 03-24-2018, Officers Stephen Summers and Sgt. Dave Clary (Centralia PD) were called to investigate a criminal trespass complaint at the Harrison Village Apartment complex in Centralia, Lewis County, Washington.

1.2. Summers spoke with a witness to that offense, Danika M. Lightle. Danika M. Lightle is the defendant in this case.

1.3. The trespasser (Brittany Hipp) was finally arrested by another officer.

1.4. Danika demanded that the officers take her (Danika) to jail as well. Danika said she did not want Brittany to be alone in the jail. Summers declined.

FINDINGS OF FACT AND CONCLUSIONS OF
LAW (BENCH TRIAL)
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1.5. Summers and Clary were getting ready to clear the scene themselves.

1.6. Danika walked to the back driver side door of Sgt. D. Clary's patrol vehicle, opened the door, and attempted to get into the car.

1.7. Summers pulled Danika away from the patrol vehicle and told her to go back to her apartment.

1.8. Danika stepped towards Summers and intentionally shoved Summers in the upper left chest. The shove caused his upper body to turn.

1.9. The officers then placed Danika under arrest for Assault 3.

1.10. At the time of the assault, Officer Summers was in uniform and performing his official duties as a law enforcement officer.

II. CONCLUSIONS OF LAW

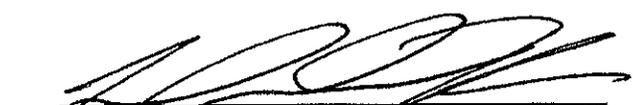
2.1. The court has jurisdiction over the defendant and subject matter of this case.

2.2. The defendant intentionally assaulted Officer Summers.

2.3. The defendant committed Assault in the Third Degree, that assault being upon a law enforcement officer who was performing his official duties at the time of the assault.

2.4. A judgment and sentence consistent with these findings shall enter.

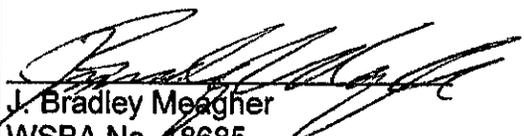
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~~JUDGE / COURT COMMISSIONER~~

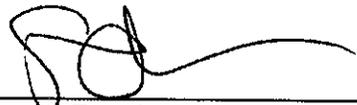
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