

FILED  
Court of Appeals  
Division II  
State of Washington  
7/9/2019 4:14 PM

No. 52789-8-II

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

---

STATE OF WASHINGTON,

Respondent,

v.

MARK MICHAEL STREDICKE,

Appellant.

---

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

---

BRIEF OF APPELLANT

---

Jessica Wolfe  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 610  
Seattle, Washington 98101  
(206) 587-2711

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... III

A. INTRODUCTION ..... 1

B. ASSIGNMENTS OF ERROR ..... 2

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 2

D. STATEMENT OF THE CASE..... 3

    1. Mr. Stredicke leads deputies on a car chase and is beaten with a flashlight during arrest. .... 3

    2. The defense motion to dismiss the assault charges is denied. .... 5

    3. The jury convicts Mr. Stredicke of attempting to elude and only one count of assault, and the court sentences him to seven years. .... 6

E. ARGUMENT ..... 7

    1. The assault conviction was not supported by sufficient evidence. .... 7

    2. Interest was improperly imposed on the legal financial obligations. .... 12

F. CONCLUSION..... 12

**TABLE OF AUTHORITIES**

**Cases**

*Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979) ..... 7

*State v. Byrd*, 125 Wn.2d 707, 887 P.2d 396 (1995) ..... 7, 8, 11

*State v. Delmarter*, 94 Wn.2d 634, 618 P.2d 99 (1980) ..... 8

*State v. Eaton*, 168 Wn.2d 476, 229 P.3d 704 (2010)..... 11

*State v. Elmi*, 166 Wn. 2d 209, 207 P.3d 439 (2009)..... 8, 9

*State v. Goins*, 151 Wn.2d 728, 92 P.3d 181 (2004)..... 12

*State v. Goodman*, 150 Wn.2d 774, 83 P.3d 410 (2004) ..... 8

*State v. Hummel*, 196 Wn. App. 329, 383 P.3d 592 (2016)..... 7

*State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018)..... 12

*State v. Randhawa*, 133 Wn.2d 67, 941 P.2d 661 (1997)..... 7

*State v. Smith*, 159 Wn.2d 778, 154 P.3d 873 (2007)..... 7

*State v. Utter*, 4 Wn. App. 137, 479 P.2d 946 (1971)..... 11

*State v. Wilson*, 125 Wn.2d 212, 883 P.2d 320 (1994)..... 11

**Statutes**

RCW 3.50.100 ..... 2, 13

RCW 9A.36.021..... 8

## A. INTRODUCTION

Mark Stredicke led two Pierce County deputies on an eight-minute car chase in the very early hours of the morning. At one point during the chase, Mr. Stredicke swerved close to the deputies as they were moving into position to run him off the road. In the course of arresting Mr. Stredicke, one of the deputies struck him with a flashlight, putting him in a coma for several days. Mr. Stredicke was charged with two counts of assault in the second degree for the momentary car swerve and also with attempting to elude a pursuing police vehicle.

At trial, Mr. Stredicke did not contest the attempting to elude charge, but brought a half-time motion to dismiss the assault charges on the basis of insufficient evidence. He argued there was no evidence presented that he intended to assault the deputies, but the court denied his motion. During deliberations, the jury expressed some reluctance to reach a unanimous verdict on the assault charges, but in an apparent compromise found Mr. Stredicke guilty of assault against one deputy only.

This Court should reverse the remaining assault conviction because there was insufficient evidence presented at trial that Mr. Stredicke intended to assault the deputy when he swerved.

B. ASSIGNMENTS OF ERROR

1. There was insufficient evidence to support the second degree assault conviction.

2. The judgment and sentence erroneously imposed interest on Mr. Stredicke's legal financial obligations.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The State must prove every essential element of a crime for a conviction beyond a reasonable doubt. Specific intent either to create apprehension of bodily harm or to cause bodily harm is an essential element of assault in the second degree. Here, there was no evidence presented that Mr. Stredicke had the specific intent to create apprehension of bodily harm or to cause bodily harm when he swerved close to the deputies. Is there insufficient evidence to support the second degree assault conviction?

2. Pursuant to RCW 3.50.100(4)(b), legal financial obligations do not accrue interest. Here, the judgment and sentence indicated the legal financial obligations imposed would bear interest at the rate applicable to civil judgments. Did the judgment and sentence erroneously impose interest on Mr. Stredicke's legal financial obligations?

#### D. STATEMENT OF THE CASE

##### **1. Mr. Stredicke leads deputies on a car chase and is beaten with a flashlight during arrest.**

Pierce County Deputy Nicholas Jankens was driving a police car with his partner, Deputy Brendon Ossman, as they patrolled the Parkland-Spanaway area. RP 178, 320. Their car was not equipped with any video-recording equipment. RP 284, 366. At around 4:30am, they witnessed Mark Stredicke speeding through a red light. RP 178, 186–87, 322. The deputies activated their lights and followed Mr. Stredicke. RP 189, 324. Mr. Stredicke led them on an eight-minute chase, during which he sped, failed to stop at stop signs, and ran red lights. RP 196, 225. At no point during the chase did Mr. Stredicke communicate in any way with the deputies. RP 286.

After several miles of following Mr. Stredicke, the deputies decided to attempt a Pursuit Intervention Technique (PIT) maneuver, in which a police vehicle makes contact with a fleeing vehicle in order to stall or disable it. RP 202–203, 213–214. Mr. Stredicke had been swerving between the oncoming lane and the correct lane, sometimes straddling the center line. RP 379. As the deputies got into position for the PIT maneuver, Mr. Stredicke's car swerved towards them. RP 214–215. However, Mr. Stredicke's car never hit the deputies' police vehicle.

RP 215, 337. Deputy Jankens was “a little surprised” by the swerve, and Deputy Ossman was “a little shocked.” RP 216, 340. Deputy Ossman testified he had “no idea what [Mr. Stredicke’s] intention was” in swerving. RP 295.

Mr. Stredicke eventually lost control of his car and ran through a barricade and into a ravine. RP 224. Mr. Stredicke exited the vehicle and started to climb up the other side of the ravine. RP 228. He did not turn towards the deputies or acknowledge them in any way. RP 299. Other deputies soon arrived on the scene and tackled Mr. Stredicke. RP 349–50. Mr. Stredicke did not assault the arresting deputies. RP 370, 400. After Mr. Stredicke was tackled to the ground, Deputy Jankens struck him twice in the back with his flashlight, which caused Mr. Stredicke to go limp. RP 351–52.

Mr. Stredicke was taken to the hospital and placed in a medically-induced coma for two days. CP 76. When he awoke, he had no recollection of the events of the car chase. *Id.* Due to his erratic behavior during the arrest, including having limbic spasms, his blood was drawn at

the hospital. CP 2. However, there was no indication of drugs or alcohol in his system. RP 557.

Mr. Stredicke was charged with two counts of assault the second degree and one count of eluding a police vehicle. CP 3–6.

**2. The defense motion to dismiss the assault charges is denied.**

After several days of testimony, including that of Deputies Jankens and Ossman, the State rested. RP 401. Mr. Stredicke made a motion to dismiss the two counts of assault. RP 402. Defense counsel argued the State had not carried its burden of proof to show Mr. Stredicke intended to assault the officers. RP 404. Defense counsel noted Mr. Stredicke had rapidly changed lanes during the entire chase, and argued Mr. Stredicke had simply been moving from one lane to the other when he swerved towards the deputies. RP 405–406.

Defense counsel concluded that “the state’s basically inferring that what [Mr. Stredicke] was trying to do was hurt the deputies or get them to feel that they were being hurt. But there’s no facts to support that. There’s no fact to indicate that this—my client had any desire to have any ill will against the deputies.” RP 405–406. The court denied the motion, concluding that “the elements are made, in the light most favorable to the state. It is up to the jury to decide here.” RP 416–17.

**3. The jury convicts Mr. Stredicke of attempting to elude and only one count of assault, and the court sentences him to seven years.**

Approximately four hours after it began deliberations, the jury submitted a question to the court. RP 507–508. The question read: “In the event that we are unable to reach a consensus on two out of three charges, how do we proceed?” CP 47; RP 507. After hearing argument from the parties, the court instructed the jury to “[p]lease continue to deliberate.” CP 47; RP 509–510.

The jury reached a verdict the following morning. RP 513. The jury found Mr. Stredicke guilty of the crime of assault in the second degree against Deputy Jankens, but found him not guilty of the same crime against Deputy Ossman. CP 13–14. The jury also found Mr. Stredicke guilty of attempting to elude a pursuing police vehicle, with a special verdict of endangerment. CP 14–15.

The court sentenced Mr. Stredicke to the high end of the standard range: 84 months, or seven years. RP 556; CP 93. The court also found Mr. Stredicke indigent and only imposed a \$500 crime victim assessment, with instructions that “[t]he financial obligations imposed in this judgment shall bear interest, from the date of the judgment until payment in full, at the rate applicable to civil judgments.” CP 91–92; RP 550–51.

Mr. Stredicke timely appealed. CP 103.

E. ARGUMENT

**1. The assault conviction was not supported by sufficient evidence.**

“The State must prove every essential element of a crime beyond a reasonable doubt for a conviction to be upheld.” *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995). A court may affirm a conviction only if it can conclude a reasonable jury viewing evidence in the State’s favor could find each element beyond a reasonable doubt. *See State v. Hummel*, 196 Wn. App. 329, 353–54, 383 P.3d 592 (2016). “Where sufficient evidence does not support a conviction, such a conviction ‘cannot constitutionally stand.’” *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 317–18, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)).

To uphold a conviction involving alternative means, there must be sufficient evidence to support each separate means presented to the jury. *State v. Smith*, 159 Wn.2d 778, 790, 154 P.3d 873 (2007) (citing *State v. Randhawa*, 133 Wn.2d 67, 74, 941 P.2d 661 (1997)). Assault in the second degree is an alternative means crime. *See id.* The State alleged two alternative means: Mr. Stredicke (1) assaulted the deputies with a “deadly weapon,” *i.e.*, his car, and (2) he assaulted the deputies “[w]ith intent to commit a felony,” *i.e.*, with intent to commit the offense of attempting to elude. *See* RCW 9A.36.021(1)(c), (e); CP 5–6 (amended

information), 29–30 (“to convict” jury instructions), 32 (defining a vehicle as a deadly weapon).

Although the criminal code does not define “assault,” there are three common-law definitions of assault in Washington: “(1) an unlawful touching (actual battery); (2) an attempt with unlawful force to inflict bodily injury upon another, tending but failing to accomplish it (attempted battery); and (3) putting another in apprehension of harm.” *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009). Here, the State argued only that Mr. Stredicke had committed assault as defined by (2) and (3). *See* RP 430; CP 33 (Instruction No. 15 defining assault); CP 5–6 (amended information).

“[S]pecific intent either to create apprehension of bodily harm or to cause bodily harm is an essential element of assault in the second degree.” *Byrd*, 125 Wn.2d at 713. Thus the State was required to prove Mr. Stredicke intended to either cause bodily harm to or cause apprehension of bodily harm when he swerved during the chase. “[S]pecific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability.” *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004) (quoting *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)) (internal quotation marks omitted).

Here, there was not sufficient evidence to “plainly indicate[]” that Mr. Stredicke intended to harm Deputy Jankens or to cause Deputy Jankens to fear bodily harm “as a matter of logical probability.” *See id.* In fact, there was no evidence, either direct or circumstantial, presented concerning Mr. Stredicke’s intent to assault the deputies at all.<sup>1</sup>

Deputy Ossman testified that at all points, Mr. Stredicke’s only intention appeared to be trying to get away from them. RP 297. Deputy Jankens testified Mr. Stredicke routinely swerved during the chase, but did not testify these maneuvers appeared indicative of assaultive intent. *See* RP 379. The deputies had no communication with Mr. Stredicke during the chase; he never gestured towards them or slammed on his brakes. RP 286. Mr. Stredicke also made no statements to the deputies after his arrest, and he did not testify at trial. Although the specific swerve that was the basis for the assault charges “appeared intentional” to the deputies,

---

<sup>1</sup> There was also insufficient evidence presented that Deputy Jankens was placed in apprehension and fear of bodily injury. *See* CP 33 (jury instruction defining assault to require that the defendant’s act “in fact creates in another a reasonable apprehension and fear of bodily injury”); *see also Elmi*, 166 Wn.2d at 215 n.3. Deputy Jankens testified that he was “a little surprised” when Mr. Stredicke swerved, but couldn’t remember if he yelled or swore. RP 340. He also testified that hitting the brakes to avoid a collision “probably wasn’t real comfortable . . . . But I was a little more focused on keeping up with the defendant.” RP 341. After repeated prodding by the prosecutor, Deputy Jankens testified “I thought we were going to crash . . . . and that we would have to fire our way out of an airbag to take him into custody if we were able to.” RP 341. After additional prompting, Deputy Jankens testified that a crash would have resulted in “[p]robably injury at the very least,” but he never testified that *he* feared bodily injury *at the time* of the swerve. RP 341. Deputy Jankens’ testimony clearly indicates he was more focused on apprehending Mr. Stredicke than fearing for his own safety. *See id.*

Deputy Ossman testified he had “no idea what [Mr. Stredicke’s] intention was” in swerving. RP 295, 339–40.

The State’s closing argument belies the lack of evidence to support the element of intent. The State argued that circumstantial evidence supported a finding that Mr. Stredicke was “in control of his vehicle” and he was a “pretty good driver.” RP 460. The State also pointed to testimony that “there were no obstructions in front of the defendant at the time he swerved in to the deputies,” and the swerve was “aggressive.” RP 460–61, 490–91. The State disregarded its own witnesses’ testimony that the aggressiveness of Mr. Stredicke’s maneuvers could be attributed to the high rate of speed at which he was driving. *See* RP 286. Finally, the State argued “the defendant had to turn the wheel in order to do this. He had to intentionally move the steering wheel in order to get the vehicle to swerve into the deputies.” RP 461–62.

However, taken in the light most favorable to the State, all this circumstantial evidence supports is a finding that Mr. Stredicke intentionally swerved—that he intentionally moved the wheel to cause his car to move. It does not support any finding Mr. Stredicke did so with the intent to either harm Deputy Jankens or cause Deputy Jankens to fear bodily harm. The State only proved the *actus reas* element of the crime beyond a reasonable doubt: that Mr. Stredicke volitionally moved his car.

“[T]he *mens rea* does not encompass the entire mental process of one accused of a crime. There is a certain minimal mental element required in order to establish the *actus reas* itself.” *State v. Utter*, 4 Wn. App. 137, 140, 479 P.2d 946 (1971) (internal quotations and citations omitted) (emphasis added); *see also State v. Eaton*, 168 Wn.2d 476, 482, 229 P.3d 704 (2010) (quoting *Utter*). An “act” “necessarily implies intention.” *Utter*, 4 Wn. App. at 140 (citation and quotation marks omitted). “Movements must be willed.” *Eaton*, 168 Wn.2d at 482.

Here, the State merely proved that Mr. Stredicke “intentionally move[d] the steering wheel,” RP 461, but failed to present any evidence he intended to cause bodily harm or to create apprehension of bodily harm. *See Byrd*, 125 Wn.2d at 713. Thus the State failed to provide sufficient evidence for a rational trier of fact to find Mr. Stredicke acted with the requisite *mens rea* to commit second degree assault. *See Hummel*, 196 Wn. App. at 353–54.

Because the second-degree assault conviction was not supported by sufficient evidence, this Court should reverse the conviction.<sup>2</sup>

---

<sup>2</sup> The jury’s verdicts are also legally inconsistent. The jury found Mr. Stredicke had committed second-degree assault against Deputy Jankens, but not Deputy Ossman. *See* CP 12–13. Mr. Stredicke’s alleged *actus reas* was clearly the same for both deputies, as they were in the same car. Additionally, if the jury found Mr. Stredicke had intentionally assaulted Deputy Jankens, that intent would transfer to Deputy Ossman. *See State v. Wilson*, 125 Wn.2d 212, 218, 883 P.2d 320 (1994) (applying the doctrine of transferred intent). The verdict here was clearly a compromise as indicated by the jury’s inability to reach consensus on “two out of three charges.” *See* CP 47. This Court may reverse a

**2. Interest was improperly imposed on the legal financial obligations.**

The judgement and sentence, entered on December 10, 2018, includes a provision that “[t]he financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments.” CP 92. However, as of a year ago, financial obligations excluding restitution no longer accrue interest. RCW 3.50.100(4)(b); *State v. Ramirez*, 191 Wn.2d 732, 747, 426 P.3d 714 (2018). Accordingly, if this Court does not reverse the conviction, it should order the trial court to strike the interest accrual provision. *See id.* at 749–50.

F. CONCLUSION

This Court should reverse the conviction. In the alternative, this Court should order the trial court to strike the interest provision in the judgment and sentence.

DATED this 9th day of July, 2019.

Respectfully submitted,

/s Jessica Wolfe  
\_\_\_\_\_  
Jessica Wolfe – WSBA 52068  
Washington Appellate Project  
Attorney for Appellant

---

guilty verdict that is inconsistent with acquittal on another count if the guilty verdict is not supported by sufficient evidence. *See State v. Goins*, 151 Wn.2d 728, 737, 92 P.3d 181 (2004).

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

---

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 52789-8-II
v.	)	
	)	
MARK STREDICKE,	)	
	)	
Appellant.	)	

---

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 9<sup>TH</sup> DAY OF JULY, 2019, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE COURT OF APPEALS - DIVISION TWO AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KRISTIE BARHAM, DPA	( )	U.S. MAIL
[PCpatcecf@co.pierce.wa.us]	( )	HAND DELIVERY
PIERCE COUNTY PROSECUTOR'S OFFICE	(X)	E-SERVICE VIA PORTAL
930 TACOMA AVENUE S, ROOM 946		
TACOMA, WA 98402-2171		
[X] MARK STREDICKE	(X)	U.S. MAIL
763301	( )	HAND DELIVERY
STAFFORD CREEK CORRECTIONS CENTER	( )	_____
191 CONSTANTINE WAY		
ABERDEEN, WA 98520		

SIGNED IN SEATTLE, WASHINGTON THIS 9<sup>TH</sup> DAY OF JULY, 2019.



X \_\_\_\_\_

**Washington Appellate Project**  
1511 Third Avenue, Suite 610  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710

# WASHINGTON APPELLATE PROJECT

July 09, 2019 - 4:14 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52789-8  
**Appellate Court Case Title:** State of Washington, Respondent v Mark Michael Stredicke, Appellant  
**Superior Court Case Number:** 17-1-03704-6

### The following documents have been uploaded:

- 527898\_Briefs\_20190709161252D2513834\_5444.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was washapp.070919-01.pdf*

### A copy of the uploaded files will be sent to:

- PCpatcecf@piercecountywa.gov
- kristie.barham@piercecountywa.gov

### Comments:

---

Sender Name: MARIA RILEY - Email: maria@washapp.org

**Filing on Behalf of:** Jessica Constance Wolfe - Email: jessica@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:  
1511 3RD AVE STE 610  
SEATTLE, WA, 98101  
Phone: (206) 587-2711

**Note: The Filing Id is 20190709161252D2513834**