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Court of Appeals  
Division II  
State of Washington  
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No. 53000-7-II

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

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STATE OF WASHINGTON,

Respondent,

v.

WILLIAM RICARDO LOWE,

Appellant.

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

The Honorable Chris Lanese, Judge  
Cause No. 18-1-01087-34

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BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the State has presented sufficient evidence to convict Lowe for intimidating a witness when reviewing Lowe's threats to Ms. Mantesta during the 911 call in the light most favorable to the State?

2. Whether the trial court erred in imposing the \$100 DNA collection fee when Lowe has presented no evidence of his "indigency," and the record is silent on whether the State has previously collected a DNA sample of Lowe?

B. STATEMENT OF THE CASE.

William Lowe and Susan Mantesta met approximately four years ago and started dating almost immediately. RP 268. Their relationship and cohabitation, however, were often interrupted due to conflicts, and the longest occasion that they lived together was six months. RP 268.

In June 2018, Lowe was again staying with Ms. Mantesta at her residence since he had been evicted from his house. RP 269. Despite the fact that she had just lost her job, Ms. Mantesta took Lowe in and paid the cost of living because she didn't want to put someone that she "care[s] about on the street." RP 270.

After being absent for three days, Lowe came back on June 25, 2018, and fell asleep on the sofa watching TV. RP 271. Having upsetting thoughts about Lowe cheating on her again, Ms. Mantesta examined his phone and found evidence that Lowe was “calling other women ‘Baby.’” RP 272-73. Ms. Mantesta woke Lowe up and requested that he leave her residence. RP 273. Lowe refused and engaged in an argument with Ms. Mantesta, where he acted angrily and defensively. RP 274. He threw a table over breaking a glass that belonged to Ms. Mantesta. RP 274.

As Lowe entered into the bathroom, he made the statement that “[a]ll you white people are the same.” RP 275. In irritation, Ms. Mantesta made a statement with a racial connotation. RP 275. Lowe came out of the bathroom, grabbed Ms. Mantesta by her throat, and threw her against the wall. RP 275-76. While choking her, Lowe said, “Say it one more time, I’ll kill you.” RP 277. Ms. Mantesta couldn’t speak nor breathe and believed that she was going to die. RP 277-78.

The choking lasted about ten to fifteen seconds before Lowe released Ms. Mantesta. RP 278. Ms. Mantesta again begged him to leave, and Lowe refused. RP 279. Ms. Mantesta subsequently

called 911. RP 278, 281. Ms. Mantesta testified that Lowe could be heard yelling in the background of the call and testified as follows:

Q. Do you remember any of what he was saying while you were on the phone with 911?

A. Yeah, he said that by the time -- he was going to burn my house down and kill me by the time they got there.

RP 281.

Ms. Mantesta further testified that Lowe's intention was to prevent her from calling the police:

Q. Did you believe his threats that time?

A. To burn my house and kill me? No.

Q. Why not?

A. 'Cause they were just threats. He wasn't -- he was on the sofa. He wasn't making an aggressive move to me. He was just trying to get me to not call the police.

RP 281-82 (emphasis added). During cross examination, Ms. Mantesta again described the threat:

Q. Maybe he was frustrated, but he didn't try to stop?

A. No, he did not. He just - - he made the comment when I did pick up the phone that I would be dead and my house would be burned down before they got there.

Q. It's a horrible thing to say?

A. Yes.

Q. It sounds like you didn't think he meant it at that time?

A. No.

Q. It was a horrible thing to say?

A. It was a scare tactic to let me know he was mad, to get me not to call.

RP 304. The prosecutor asked Ms. Mantesta about a change in her voice in the 911 call when the officer arrived, and Ms. Mantesta state, "I felt safe. I didn't have to be strong anymore." RP 312.

Officer Kelly Clark responded to the residence. RP 220. Officer Clark indicated that Ms. Mantesta's demeanor was "exited" and described an "angry and fearful demeanor." RP 220. Upon initial contact with Mantesta, she stated that Lowe, "grabbed her by her throat and shoved her against the refrigerator and that he was gonna kill her and burn the house down." RP 315. Officer Clark contacted Lowe in the kitchen area and noted that he was gathering items to leave. RP 223. Lowe appeared to be calm and was looking for his keys. RP 223. After detaining Lowe, Officer Clark contacted Ms. Mantesta again and noticed that she had two small red marks on each side of her neck. RP 225. Officer Clark also noticed a broken glass in the garbage can. RP 226, 232.

After speaking with Ms. Mantesta, Officer Clark spoke with Lowe. RP 234. Lowe indicated “that they were arguing about text messages and phone calls that she was curious about and questioning him about the text messages and the messages that were on his phone.” RP 234. Lowe stated that it was a “heated argument.” RP 235. Lowe told Officer Lowe that he became frustrated after the racially connotated statement from Ms. Mantesta, and admitted that he flipped over the coffee table. RP 235-236. When asked about the marks on Mantesta’s neck, Lowe stated that she “must have made those marks herself.” RP 236. Lowe denied making any comments or threats to her. RP 236-237.

Officer Kenny Driver testified that he took a written statement from Ms. Mantesta and she told him:

I called William a name after he called me a white person. He came out of the bathroom and choked me. When I asked him to leave, he said he would not, I would have to call the cops. He said, while on the phone, that if I called I would be dead when they got here and he would burn this house down.

RP 326, Ex. 11. Officer Driver further testified that “she said that when Mr. Lowe threatened to burn the house down and kill her that she felt that he could carry that threat out.” RP 327.

Lowe testified that he “didn’t think she would call the police.” RP 344. He stated, “we’re pretty private people. If we tell anybody about anything, it’s maybe one or two friends, but we usually keep things right amongst ourselves.” RP 344-345. Lowe denied that he did anything to discourage Mantesta from calling the police. RP 345. On cross examination, Lowe admitted that he didn’t want her to call the police. RP 352-353.

Lowe was charged with assault in the second degree domestic violence, intimidating a witness domestic violence, felony harassment domestic violence, and malicious mischief in the third degree domestic violence. CP 4-5. Lowe was found guilty of a lesser included offense of assault in the fourth degree, intimidating a witness, and felony harassment, each with a finding of domestic violence. RP 441-42; CP 88-91. The jury acquitted him on the malicious mischief in the third degree charge. RP 442, CP 92-93. During sentencing, the trial court imposed a sentence of 36 months and imposed legal financial obligations including a \$500 crime victim’s assessment and a \$100 DNA collection fee. CP 166-177.

This appeal followed alleging insufficiency of evidence on the intimidating a witness charge and assigning error to the imposition of the \$100 DNA collection fee.

C. ARGUMENT.

1. Evidence supported the reasonable inference that Lowe threatened Ms. Mantesta in an attempt to induce her not to call the police.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt.” (Cite omitted.) This inquiry does not require a reviewing court to determine whether it believes the evidence at trial established guilt beyond a reasonable doubt. “Instead, the relevant question 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. (Cite omitted, emphasis in original.)

State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

To convict a person of intimidating a witness, the State needs to prove that he or she “by use of a threat against a current or prospective witness, attempt[ed] to . . . [i]nduce that person not

to report the information relevant to a criminal investigation.” RCW 9A.72.110(1)(d).

“A claim of insufficiency admits the truth of the State's evidence and *all inferences that reasonably can be drawn therefrom.*” Salinas, 119 Wn.2d. at 201 (emphasis added). Circumstantial evidence and direct evidence are equally reliable, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The evidence presented at trial supports the rational and reasonable inference that Lowe made a threat to Mantesta in an attempt to dissuade her from speaking with law enforcement. When he realized that she was contacting the police, he yelled that he would “burn [her] house down and kill [her] by the time [the police] got there.” RP 281. It is reasonable to infer that Lowe was trying to intimidate Ms. Mantesta in the hope that she would abandon her attempt to contact the police out of fear. Mantesta also testified that when making the threat, Lowe “was just trying to get me to not call the police.” RP 281.

Additionally, when law enforcement arrived, Mantesta was “excited” and described as having an “angry and fearful demeanor.”

RP 220. Upon Officer Clark's initial contact with Mantesta, she stated that Lowe, "grabbed her by her throat and shoved her against the refrigerator and that he was gonna kill her and burn the house down." RP 315.

A reasonable jury could make the same conclusion that Mantesta did, that Lowe's threat was a scare tactic designed to intimidate her into abandoning her call to law enforcement. RP 281, 304. Despite Mantesta's testimony, the evidence supported the inference that she was afraid of the threat. She "felt safe" when law enforcement arrived, and told Officer Driver that she felt Lowe was capable of carrying out the threat. RP 312, 327. Regardless of whether or not Mantesta believed that threat would be carried out, the relevant question is whether Lowe's threat was intended to induce Mantesta not to report the information. RCW 9A.72.110(1)(d).

Lowe argues that since he did not further interfere with Mantesta's phone call, there is insufficient evidence that he intended to interfere with her attempt to report the incident. Brief of Appellant at 6. However, a rational juror could conclude that, where Lowe did not carry out his threat to kill Mantesta and burn her house down, his threat was in fact a scare tactic designed to

induce her to withhold relevant information from her report. Even Lowe ultimately admitted at trial that he did not want Mantesta to contact law enforcement. RP 352-353.

Considering the totality of the evidence and viewing the reasonable inferences in the State's favor, there was sufficient evidence at trial for a rational jury to find that Lowe was attempting to induce Ms. Mantesta not to report the incident to the police when she was making the phone call. This Court should affirm the conviction.

2. The record on appeal is silent as to whether Lowe has previously provided a sample of his DNA to the State Crime Lab; however, the State does not oppose an order striking the DNA fee.

Legislative amendments to RCW 43.43.7541, which took effect on June 7, 2018, require that the \$100 DNA fee not be collected if the State has previously collected the offender's DNA as a result of a prior conviction. Laws of 2018, ch. 269, § 17.

The record is silent in regard to whether or not Lowe has previously submitted a sample of his DNA to the State crime lab. Lowe argues that because he has prior felony convictions, the State clearly must have previously collected his DNA, however, defendants do not always submit to DNA collection despite being

ordered to do so. Brief of Appellant, at 8; State v. Thornton, 188 Wn. App. 317, 372, 353 P.3d 642 (2015). In State v. Thibodeaux, 6 Wn. App.2d 223, 430 P.3d 700 (2018), Division I of this Court rejected a similar argument as that made by Lowe regarding the DNA fee, stating, “the existing record does not establish that the State has already collected Thibodeaux’s DNA.” Id. at 7. The fact of a prior conviction alone is not enough to show actual submission of a DNA sample. State v. Lewis, 194 Wn. App. 709, 379 P.3d 129, *review denied*, 186 Wn.2d 1025, 385 P.3d 118 (2016).

Claims of error on direct appeal must be supported by the existing record on review. RAP 9.1. However, the State has checked its records and noticed that there is an indication that Lowe has previously provided a DNA sample. While the State does not concede error based on the record, in the interest of expedient justice, the State does not oppose a remand for a ministerial order striking the \$100 DNA collection fee.

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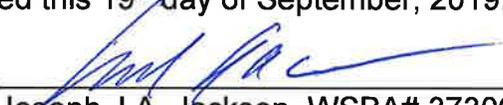
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D. CONCLUSION.

Sufficient evidence exists to support Lowe's conviction for intimidating a witness. The State does not oppose an order striking the \$100 DNA fee. The State respectfully requests that this Court affirm Lowe's conviction and sentence in all other aspects.

Respectfully submitted this 19<sup>th</sup> day of September, 2019.

  
\_\_\_\_\_  
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**DECLARATION OF SERVICE**

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Court of Appeals using the Appellant's Court Portal utilized by the Washington State Court of Appeals, Division II, for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: September 19, 2019

Signature:  \_\_\_\_\_

**THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE**

**September 19, 2019 - 10:24 AM**

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