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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

MARCUS A. CHURCH,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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TABLE OF CONTENTS

TABLE OF AUTHORITES ii

I. ISSUES.....1

II. STATEMENT OF THE CASE1

III. ARGUMENT

 A. THE STATE PRESENTED SUFFICIENT EVIDENCE TO
 SUSTAIN THE JURY’S VERDICT THAT CHURCH
 COMMITTED ASSAULT IN THE THIRD DEGREE.....5

 1. Standard Of Review.....6

 2. The State Proved, As It Is Required To, Each Element
 Of Assault in the Third Degree.....6

IV. CONCLUSION.....17

TABLE OF AUTHORITIES

Washington Cases

In re Stranger Creek, 77 Wn.2d 649, 466 P.3d 508 (1970)..... 12

State v. Belleman, 70 Wn. App. 778, 856 P.2d 403 (1993).10, 11,13

State v. Butler, 2 Wn. App. 2d 549, 411 P.3d 393 (2018) 16

State v. Camarillo, 115 Wn.2d 60, 794 P.2d 850 (1990).....7

State v. Colquitt, 133 Wn. App. 789, 137 P.3d 893 (2006)6

State v. Delmarter, 94 Wn.2d 634, 618 P.2d 99 (1980)7

State v. Goodman, 150 Wn.2d 774, 83 P.2d 410 (2004)6

State v. Goree, 36 Wn. App. 205, 673 P.2d 194 (1983).....9, 10

State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980).....7

State v. Melland, 9 Wn. App. 2d 786, 452 P.3d 562 (2019)6, 7

State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997)7

State v. Olinger, 130 Wn. App. 22,121 P.3d 724 (2005)7

State v. Salinas, 119 Wn.2d 192, 829 P.2d 1068 (1992)7

Federal Cases

In re Winship, 397 U.S. 358, 90 S. Ct 1068, 25 L.Ed.2d 368
(1970)6

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

Washington Statutes

RCW 9A.36.031(1)5, 6, 8, 12, 13, 14, 15, 16, 17

Constitutional Provisions

U.S. Const. amend. XIV, § 16

Other Rules or Authorities

WPIC 10.019

WPIC 35.219

WPIC 35.509

I. ISSUES

- A. Did the State present sufficient evidence to sustain the jury's verdict for Assault in the Third Degree?

II. STATEMENT OF THE CASE

Marcus Church decided he did not want to follow the rules of his community custody and report as required. RP 64-69. Church understood the consequence of not reporting to his Department of Corrections (DOC) Community Corrections Officer (CCO) was that she would obtain a secretary's warrant for his arrest. RP 65-67. Church, after failing to report on January 29th, 2019, told his CCO via text message on February 13th, that he had a few things he needed to take care of and once that was completed he would turn himself in later that week. RP 69. Church did not turn himself in as promised. *Id.*

On March 30th, around 11:00 a.m., Lewis County Sheriff's Deputy Robb was investigating an incident regarding a blue car and a dispute out on Hunting Road in Lewis County. RP 71-73. Deputy Robb was able to speak to the driver of the vehicle at a residence on Hunting Road. RP 73. While at the residence, Deputy Robb noticed a man, later identified as Church, walking towards the residence. RP 73. Church was wearing a hooded sweatshirt with the hood pulled up over his head, and it appeared Church was concealing his face.

RP 75, 79. Church spoke with Deputy Robb and then walked into the house. RP 79.

Chehalis Police Sergeant McKnight lives across the street from the residence Deputy Robb responded to on Hunting Road. RP 80, 111-14. Deputy Robb had already left the residence but wanted to know if Sergeant McKnight recognized who Deputy Robb had been speaking to earlier. RP 80-81, 114. Sergeant McKnight was familiar with Church based off photographs he had previously viewed. RP 115.

The stretch of road Sergeant McKnight lives on has several houses that are fairly close to each other, even though this area of Lewis County is rural. RP 116. Sergeant McKnight's residence is approximately 60 feet away from the residence across the street. *Id.* Sergeant McKnight did not initially see the person when he was speaking to Deputy Robb. *Id.* Sergeant McKnight first saw the person when Deputy Robb entered the residence to speak to the people inside. *Id.* When Deputy Robb entered Sergeant McKnight observed "Church run from the back of the residence and jump a few fences and run east through people's backyards." RP 116-17.

Sergeant McKnight was inside of his residence initially, but exited his residence to see where Church was going. RP 117.

Sergeant McKnight called Deputy Robb on the phone and informed Deputy Robb that Church was running away from the residence, eastbound, through people's backyards. RP 117. Deputy Robb had an injury that prevented him from running, so he ran to his patrol vehicle. RP 84. As Church was running through the backyards, Sergeant McKnight was running parallel, giving Deputy Robb updates regarding Church's location. RP 117. Sergeant McKnight was not on duty, and was wearing his regular street clothes. RP 125-26.

Deputy Robb was attempting to confirm with dispatch that Church had any active warrants. RP 82-83. Sergeant McKnight ran after Church because Sergeant McKnight knew Church had an escape from community custody warrant and Deputy Robb was alone. RP 118. Sergeant McKnight, having previously been a Lewis County Sheriff's Deputy, understood that Deputy Robb would not be receiving backup from another deputy, therefore would be alone with a person who was running, and unlikely to stop unless forced to. *Id.* Sergeant McKnight was concerned for Deputy Robb's safety if Deputy Robb was forced to fight Church alone. *Id.*

Sergeant McKnight came around a corner and Sergeant McKnight yelled at Church, "Hey, you need to stop. Police. Just stop."

RP 118-19. Church replied, "Seriously?" and balled up his fist, then stated something to the effect of not believing Sergeant McKnight was a police officer, then turned and started to run again. RP 119.

Sergeant McKnight continued to follow Church, jogging after him. RP 119. The men were approximately a football field away from the residence when Church turned and faced McKnight. RP 119-20. Church balled up his fists again, but this time about chest height and took a fighting stance, like that of a boxer. RP 120. Church moved his hand back and Sergeant McKnight realized Church was going to strike him. *Id.* Sergeant McKnight lowered his body level and tucked down his head to attempt to mitigate as much of the blow as possible. RP 120-21. Church struck Sergeant McKnight in the top of his head. RP 121.

After being struck by Church, Sergeant McKnight felt something pull the back of his shirt towards Church. RP 121. Church pulled Sergeant McKnight closer to Church, so Sergeant McKnight lowered himself even more, grabbed Church by behind the knees and the back of his thighs, stood up and dumped Church off to the side of his back so Sergeant McKnight would land on top of Church. *Id.* Sergeant McKnight wrestled Church around, maneuvering so Sergeant McKnight was sitting on top of Church's stomach. RP 122-

23. The entire chase lasted approximately 30 seconds. RP 123. Deputy Robb arrived, Sergeant McKnight assisted Deputy Robb by rolling Church over onto his stomach and they handcuffed Church. RP 86, 124. Church was detained and then arrested on his DOC warrant. RP 87.

The State charged Church with Escape from Community Custody and Assault in the Third Degree. CP 22-23. The Assault in the Third Degree was charged under RCW 9A.36.031(1)(a) and (1)(g). CP 23. The State clarified it was proceeding only under the (1)(a) prong of the statute. RP 10-11. Church elected to exercise his right to a jury trial. See RP. Church was convicted of both counts as charged. CP 47, 48. Church was sentenced to 51 months in custody. CP 69-70. Church timely appeals his conviction and sentence. CP 85-92.

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

III. ARGUMENT

A. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUSTAIN THE JURY'S VERDICT THAT CHURCH COMMITTED ASSAULT IN THE THIRD DEGREE.

There was sufficient evidence presented to show beyond a reasonable doubt that Church committed the crime of Assault in the

Third Degree, as charged per RCW 9A.36.031(1)(a). Assault in the Third Degree, as charged, does not require proof a defendant knows the person is lawfully apprehending them, only that the arrest or apprehension is lawful. Contrary to Church's assertion, the facts taken in the light most favorable to the State sustain all of the essential elements of the charged offense. The Court should sustain the jury's verdict.

1. Standard Of Review.

This Court reviews claims regarding sufficiency of evidence de novo. *State v. Melland*, 9 Wn. App. 2d 786, 801, 452 P.3d 562 (2019).

2. The State Proved, As It Is Required To, Each Element Of Assault in the Third Degree.

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." *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). "All reasonable inferences from the evidence are drawn in favor of the State and interpreted most

strongly against the defendant.” *Melland*, 9 Wn. App. 2d at 801, *citing State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992), *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d. 560 (1979). Sufficiency of evidence is reviewed in the light most favorable to the State to determine if any rational jury could have found all the essential elements of the crime charged beyond a reasonable doubt. *Salinas*, 119 Wn.2d at 201. 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).

The role of the reviewing court does not include substituting its judgment for the jury’s by reweighing the credibility or importance of the evidence. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The determination of the credibility of a witness or evidence is solely within the scope of the jury and not subject to review. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), *citing State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). “The fact finder...is in the best position to evaluate conflicting evidence, witness credibility, and the weight to be assigned to the evidence.” *State v. Olinger*, 130 Wn. App. 22, 26, 121 P.3d 724 (2005) (citations omitted).

To convict Church of Assault in the Third Degree, as charged in this case, the State was required to prove, beyond a reasonable doubt, that Church, with the intent to prevent or resist the lawful detention or apprehension of himself or the execution of any lawful process or mandate of any court officer, did assault another; and/or did intentionally assault a law enforcement officer performing his official duties at the time of the assault. RCW 9A.36.031(1)(a); CP 23.

The to-convict jury instruction required the jury to find:

To convict the defendant of the crime of assault in the third degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about March 30, 2019, the defendant assaulted Mathew McKnight; and

(2) That the assault was committed with the intent to prevent or resist the lawful apprehension or detention of the defendant; and

(2) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP 37 (Instruction 11), *citing* WPIC 35.21. The jury was given the standard definition assault. CP 38, *citing* WPIC 35.50. The jury was also given an instruction defining intent, “A person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime.” CP 39, *citing* WPIC 10.01.

Church does not contest the lawfulness of his arrest. Brief of Appellant 6. Church asserts he could not form the requisite intent because he did not know he was being apprehended or arrested. *Id.* Church argues if he believed Sergeant McKnight was attacking him, rather than lawfully detaining or arresting Church, he cannot be guilty of assaulting a person with the intent to resist apprehension or arrest. *Id.* Church’s argument is contrary to the case law and sound public policy. Further, when viewed in the light most favorable to the State, the evidence presented support Church’s conviction.

A little over 36 years ago, the Court in *Goree* stated that RCW 9A.36.031(1)(a) is not a subjective statute. *State v. Goree*, 36 Wn. App. 205, 209, 673 P.2d 194 (1983). *Goree*’s interpretation was that absent proof *Goree* knew the arrest was lawful, there was insufficient evidence to convict of the crime charged. *Goree*, 36 Wn. App. at 208. The Court rejected this interpretation, stating, “[t]he primary purpose of the statute is to prohibit assaultive behavior which interferes with

the custodian's lawful obligations to insure a peaceful and orderly custody." *Id.* at 209 (internal quotations and citations omitted).

Church asserts he is not challenging the lawfulness of the arrest, like that of the defendant in *Goree*. Brief of Appellant at 6-8. Yet, Church also argues the State should not be permitted to prove the intent to assault without proving the defendant's subjective intent. *Id.* Church would require proof beyond a reasonable doubt that the defendant knew he or she was being lawfully detained or arrested and intentionally assaulted the person arresting or detaining them. *Id.* Church's argument would allow any defendant to simply state he or she did not believe the person identifying themselves as police officer was telling the truth, therefore, their assaultive conduct was not lawful, because they could not form the requisite intent. Further, a person does not need to be a police officer to lawfully detain or apprehend a person, something Church overlooks with his demand to overturn four decades' worth of precedent. *State v. Belleman*, 70 Wn. App. 778, 782, 856 P.2d 403 (1993).

The defendant in *Belleman* made the identical argument Church makes today, the issue was that Belleman did not know the person who apprehended him, Officer Kasprzyk, was a police officer in uniform. *Belleman*, 70 Wn. App. at 782. Belleman, unlike Church,

was arguing the issue in regards to the affirmative defense of self-defense, but his argument mirrors that of Church. *Id.* at 782-83. Belleman, who was identified as a suspect in an attempted rape and the description of the vehicle he was driving was provided to Officer Kasprzyk, who was off-duty, but in his patrol car with his police dog. *Id.* at 779. Eventually, following a suspicious car down a dirt road, the officer saw the male driver flee the vehicle, which belonged to the victim. *Id.* The officer and dog pursued Belleman, with Belleman becoming entangled in a barbed wire fence. *Id.* The dog reached Belleman and grabbed his leg. *Id.* The officer “identified himself, grabbed Belleman, and ordered him to stop struggling.” *Id.* Belleman did not heed the officer’s request and instead began striking both the officer and the dog. *Id.*

Belleman’s version of the events differed greatly from those of the officer’s. *Id.* at 780. Belleman stated he had been driving around, looking for the victim, when he saw a vehicle following him. *Id.* at 780. Belleman claimed he did not know the vehicle was a police car. *Id.* Belleman said he abandoned the vehicle on the dirt road because he was intoxicated, panicked, and confused. *Id.* Belleman’s explanation continued by stating he was attacked by a dog, heard a man’s voice, the man began to strike him, and not knowing the man

was a police officer and believing he was under attack, Belleman fought back. *Id.*

The Court held the legislature, when enacting RCW 9A.36.031(1)(a) did not include an element requiring a person to know the arrester was a police officer. *Id.* at 782. The Court correctly noted “not all lawful arrest are made by police officers.” *Id.* The officer could have been a private citizen and lawfully apprehended the defendant under the same circumstances and the defendant would still be subject to prosecution under RCW 9A.36.031(1)(a). *Id.* The issue still falls back on whether the arrest was lawful. *Id.*

Church argues the lack of subjective assessment made sense 35 years ago, but with the changing times, the current relationship between the police and the community is different. Brief of Appellant at 6-7. Church is asking this Court to alter long set precedent without actually discussing stare decisis or addressing how the current precedent is incorrect and harmful.

The doctrine of stare decisis precludes the alteration of precedent without a clear showing that the established rule is harmful and incorrect. *In re Stranger Creek*, 77 Wn.2d 649, 653, 466 P.3d 508 (1970). The policy behind stare decisis is to promote stability in court made law. *Stranger Creek*, 77 Wn.2d at 653. It does not

preclude this Court from consideration of arguments to the contrary, however, as it does not require this Court to continue to uphold a law in perpetuity that is incorrect and harmful. *Id.* The rule of law is a fluid thing, and must change when reason requires it to do so. *Id.*

This Court should not alter the precedent in the line of cases citing the defendant's subjective assessment is irrelevant in prosecution under RCW 9A.36.031(1)(a). The Court in *Belleman* explained the policy decision:

A holding to the contrary would throw into question every resisting arrest charge where the defendant claims he did not know his arrester was lawfully authorized. Such circumstances might arise where visibility is poor, for example, or where a police officer is undercover, or if the arrestee is simply confused about the identity of his arrester.

Belleman, 70 Wn. App. at 783. Further, as argued above, a private citizen may lawfully apprehend a person. Under Church's interpretation a defendant would always be able to argue he or she had no idea the private citizen was lawfully detaining or apprehending them, therefore rendering a large portion of statute irrelevant and reducing it to pertaining to uniformed law enforcement personnel only.

Church concedes the lawfulness of his arrest. Brief of Appellant 6. Sergeant McKnight knew who Church was from

previously viewing photographs of Church and knew Church had an active DOC escape from community custody warrant. RP 115, 118. Sergeant McKnight explained he was running parallel with Church and giving Deputy Robb updates regarding Church's location. RP 118. Church argues McKnight was merely keeping an eye on him, not intending to apprehend Church, therefore, the State could not prove Church assaulted McKnight while he was being lawfully apprehended. Brief of Appellant 8. This argument fails for multiple reasons.

“A person is guilty of assault in the third degree if...[w]ith the intent to prevent or resist the execution of any lawful process or mandate of any court officer or lawful apprehension or detention of himself, herself, or another person, assaults another.” RCW 9A.36.031(1)(a). While the State submits there is sufficient evidence to show Sergeant McKnight was apprehending Church, the statute does not require the assaulted person to be the person actually apprehending the defendant. A defendant is guilty of the crime if they assault any person with the intent to prevent a lawful apprehension or detention of themselves or another person. RCW 9A.36.031(1)(a). There are numerous conceivable ways the assaulted person may not be the one actually apprehending the defendant. A person could be

a citizen bystander attempting to block a person they see running from the police and the person assaults the citizen as they continue their attempt to flee. A person who witnessed a crime occur could be on the phone with dispatch giving location information as to where the suspect is in real time as police are on their way to apprehend the suspect and the suspect assaults the person once realizing what is occurring. Both of these scenarios fit within RCW 9A.36.031(1)(a).

At a minimum, Sergeant McKnight was assisting Deputy Robb apprehend Church by keeping Church in line of sight, staying on the phone with Deputy Robb, and giving Robb updates on Church's location. RP 117-20, 125, 128, 131. Church was not running away from Sergeant McKnight, rather, Church left the residence because he knew he had a warrant and was running away from Deputy Robb. RP 88, 116-17. Church even apologized after being caught; telling Deputy Robb that the only reason he was running was his desire to see his son be born. *Id.* Sergeant McKnight's intention was to assist Deputy Robb however necessary because Sergeant McKnight did not want Deputy Robb to have to fight Church without backup. RP 118. Therefore, Church is fleeing Deputy Robb, Sergeant McKnight is assisting by chasing Church and giving locations updates, and Church decides to assault Sergeant McKnight to prevent or resist

lawful apprehension or detention. RP 118-21. Therefore, the facts when taken in the light most favorable to the State, and interpreted most strongly against Church, sufficiently prove Assault in the Third Degree, as charged.

Further, Sergeant McKnight actually commanded Church to stop, and identified himself as police. RP 118. Church responded, “Seriously?” and balled up his fists. RP 119. Sergeant McKnight then stated, “Hey, you need to stop. Police. Just stop.” *Id.* Church said he did not believe Sergeant McKnight, and ran, Sergeant McKnight followed, continuing to tell Church to stop. *Id.* Simply being commanded to stop can be a seizure. *State v. Butler*, 2 Wn. App. 2d 549, 561, 411 P.3d 393 (2018). After being commanded to stop, coming face to face with Sergeant McKnight, being told Sergeant McKnight is a police officer, and then running again, Church decides to suddenly stop and square off with Sergeant McKnight. RP 118-20. Church took a fighting stance and delivered a blow to Sergeant McKnight’s head. RP 120-21. Again, when interpreting the evidence most strongly against Church and taking it in the light most favorably to the State, the State proved beyond a reasonable doubt Church committed Assault in the Third Degree, as charged per RCW

9A.36.031(1)(a). This Court should affirm the conviction and sentence.

IV. CONCLUSION

RCW 9A.36.031(1)(a) does not require the State to prove the defendant's subjective assessment that he or she was actually being apprehended and not assaulted. There was sufficient evidence presented to sustain Church's conviction for Assault in the Third Degree as charged. This Court should affirm Church's conviction and sentence.

RESPECTFULLY submitted this 31st day of January, 2020.

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