

FILED
Dec 07, 2012
Court of Appeals
Division III
State of Washington

NO. 303411-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

JOSHUA CHARLES DONLEY, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 09-1-00714-8

BRIEF OF RESPONDENT

ANDY MILLER
Prosecuting Attorney
for Benton County

MEGAN A. WHITMIRE, Deputy
Prosecuting Attorney
BAR NO.29933
OFFICE ID 91004

7122 West Okanogan Place
Bldg. A
Kennewick WA 99336
(509) 735-3591

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I. RESPONSE TO DEFENDANT’S ASSIGNMENT OF ERRORS

A. The defendant’s conviction is supported by sufficient evidence.

II. ISSUES PRESENTED IN DEFENDANT’S BRIEF

A. Did the State present sufficient evidence to support the defendant’s conviction for assault in the second degree?

III. STATEMENT OF THE CASE

The facts relevant to this appeal are sufficiently presented in the defendant’s brief at pages one through five, with the following additions:

Ms. Cabe testified that while the defendant had her in a “choke hold,” he told her, “You’re going – you’re going night night, bitch.” (10/19/10, RP 41). She further testified, “he had his legs wrapped around – the back of his knees was [sic] around the front of mine or about my thighs, and his feet were hooked around the back of my calves, and he just pulled me, just stretched me.” (*Id.*) Further, she testified that, “I had Levis on, and he ripped my Levis down from behind, and um, told me, ‘Now you’re getting fucked. Now you’re fucked, bitch.’” (*Id.* at 42). When the police arrived at the scene, the defendant got off of Ms. Cabe and exclaimed, “Where’d the Mexican go?” (*Id.* at 43).

The jury was instructed on voluntary intoxication. (CP 233).

IV. ARGUMENT

A. **The State presented sufficient evidence to support the defendant's conviction.**

A defendant's conviction is supported by sufficient evidence when, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). Under this test, all reasonable inferences from the evidence will be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). By claiming insufficient evidence, the defendant admits the truth of the State's evidence, and all inferences that can reasonably be drawn from that evidence. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980).

The defense argues that the State failed to present sufficient evidence that the defendant acted with intent, given the undisputed evidence that the defendant was voluntarily intoxicated at the time of the event. The defense of voluntary intoxication is a complete defense if it is found that the defendant "was so drunk at the time he is alleged to have committed the crime charged as to render him unconscious of his act,

incapable of controlling his will, and formulating and entertaining a felonious intent” *State v. Byers*, 136 Wn. 620, 622, 241 P. 9 (1925). Although it was not disputed that the defendant was, to some degree, intoxicated at the time of the event, his words and conduct established goal directed and intentional behavior.

The assault he leveled against Ms. Cane consisted of several distinct maneuvers; each of which required forethought, and demonstrated a specific intent or goal. Moreover, while engaging in these maneuvers, he made statements to her which explained his purpose for committing each act. For example, while the defendant had Ms. Cane in a choke hold and was utilizing his legs to stretch her body, he told her that she was going “night night.” (10/19/10, RP 41). Along with that, after telling Ms. Cane that she was “getting fucked,” he demonstrated his intent to accomplish that act by pulling down her pants. (*Id.* at 42).

There was also compelling evidence presented to demonstrate that the defendant was conscious of the wrongfulness of his conduct. When a passerby attempted to intervene, he threatened, “stay out of it or I will kill you.” (*Id.* at 97). Furthermore, when police arrived, the defendant had the presence of mind to stop what he was doing and blame the assault on someone else. (*Id.* at 43).

Based upon the defendant's action, which were indicative of a person acting in a deliberate and goal directed manner, a reasonable finder of fact could conclude that the defendant was acting intentionally. As such, the jury was presented with sufficient evidence by which to find the defendant guilty of assault in the second degree.

Moreover, the jury was instructed on voluntary intoxication, and by its verdict, rejected that defense.

V. CONCLUSION

Based upon the above arguments, the defendant's conviction should be affirmed.

RESPECTFULLY SUBMITTED this 6th day of November 2012.

ANDY MILLER

Prosecutor



MEGAN A. WHITMIRE, Deputy

Prosecuting Attorney

Bar No. 29933

OFC ID NO. 91004

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

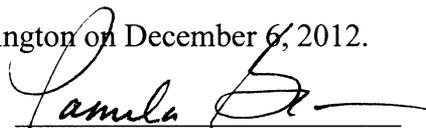
Kenneth H. Kato
Attorney at Law
1020 N. Washington Street
Spokane, WA 99201-2237

E-mail service by agreement
was made to the following
parties: khkato@comcast.net

Joshua Donley
#947511
Clallam Bay Corr.ctr.
1830 Eagle Crest Way
Clallam Bay WA 98326

U.S. Regular Mail, Postage
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Signed at Kennewick, Washington on December 6, 2012.



Pamela Bradshaw
Legal Assistant