

FILED  
May 6, 2013  
Court of Appeals  
Division III  
State of Washington

No. 31129-5-III

IN THE COURT OF APPEALS FOR  
THE STATE OF WASHINGTON  
DIVISION III

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STATE OF WASHINGTON,

Respondent,

v.

CODY BRIAN BEEKS,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
Klickitat County, STATE OF WASHINGTON  
Honorable Brian P. Altman, Judge  
Superior Court No. 11-1-00100-0

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BRIEF OF RESPONDENT

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES

STATUTES..... ii  
CASES ..... ii

I. COUNTERSTATEMENT OF THE ISSUE.....1

II. STATEMENT OF THE CASE.....1

    A. PROCEDURAL HISTORY .....1

    B. FACTS .....1

III. ARGUMENT .....2

    A. THE STATE PRESENTED SUFFICIENT EVIDENCE TO  
        ALLOW A RATIONAL TRIER OF FACT TO FIND THE  
        DEFENDANT GUILTY OF ASSAULT IN THE FOURTH  
        DEGREE.....2

IV. CONCLUSION.....4

## TABLE OF AUTHORITIES

### Cases

<i>Francis v. Franklin</i> , 471 U.S. 307 (1985).....	3
<i>Jackson v. Virginia</i> , 443 U.S. 307 (1979).....	2
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980). ....	2
<i>State v. Garcia</i> , 20 Wn.App. 401, 579 P.2d 1034 (1978).....	2
<i>State v. Partin</i> , 88 Wn.2d 899, 567 P.2d 1136 (1977).....	2
<i>State v. Woods</i> , 5 Wn.App. 399, 404 P.2d 624 (1971). ....	2

### Statutes

RCW 9A.36.041. ....	2
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## **I. COUNTERSTATEMENT OF THE ISSUE**

1. Whether, after viewing the facts in the light most favorable to the prosecution, the State presented sufficient evidence to allow a rational trier of fact to find the defendant guilty of Assault in the Fourth Degree.

## **II. STATEMENT OF THE CASE**

### **A. PROCEDURAL HISTORY**

On August 29, 2011, Cody Brian Beeks (“Beeks”) was charged with child molestation in the third degree and assault in the fourth degree with sexual motivation. The alleged victim was fifteen year old M.R.A. A jury found Beeks guilty of assault in the fourth degree but did not find a sexual motivation. The jury found Beeks not guilty of child molestation.

Beeks timely appealed this decision on September 4, 2012.

### **B. FACTS**

The State adopts the facts set forth in Appellant’s Opening Brief.

### III. ARGUMENT

#### A. THE STATE PRESENTED SUFFICIENT EVIDENCE TO ALLOW A RATIONAL TRIER OF FACT TO FIND THE DEFENDANT GUILTY OF ASSAULT IN THE FOURTH DEGREE

Evidence is sufficient to support a conviction when "after viewing that 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." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *see also State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). Reasonable inferences from the evidence must be drawn in the State's favor and "interpreted most strongly against the defendant." *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977) (*citing State v. Woods*, 5 Wn.App. 399, 404 P.2d 624 (1971)).

To convict Beeks of Assault in the Fourth Degree, the State had to prove beyond a reasonable doubt that he assaulted M.R.A. RCW 9A.36.041. Touching is unlawful if "it was neither legally consented to nor otherwise privileged, and was either harmful or offensive." *State v. Garcia*, 20 Wn.App. 401, 403, 579 P.2d 1034 (1978). Jury Instruction 9 defined assault as "an intentional touching of another person that is harmful or offensive regardless of whether any physical injury is done to the person." CP 78. A touching is

considered offensive when “it would offend an ordinary person who is not unduly sensitive.” *Id.*

It is uncontested that M.R.A. did not consent to Beeks’s touching her and that the contact was intentional rather than accidental. The question, then, is whether any rational trier of fact could have found the touching offensive. Jurors are presumed to carefully follow a court’s instructions. *Francis v. Franklin*, 471 U.S. 307, 324 n.9 (1985).

Beeks argues that his touching of M.R.A. was not harmful or offensive as he did nothing more than “gently shake” M.R.A. to rouse her. Brief of Appellant at 6-7. He argues that this contact was not unwarranted by prevalent social usages, and only an unreasonable person would find it offensive. Brief of Appellant at 7. However, Beeks’s characterization of the contact at issue is based solely on his own testimony. He completely ignores the testimony of M.R.A., who told the jury that Beeks placed his hand on her thigh, ran his hand up near her butt, and placed his hand on her chest. RP 32. Reasonable inferences from the evidence, interpreted “most strongly against the defendant,” support the jury’s conclusion that the touching was offensive.

Beeks presumes that because the jury did not find sexual motivation, the jurors must have believed his version of events and could not have found that the touch was harmful or offensive. This is not the only possibility. The

jury could have believed both Beeks and M.R.A. Jury Instruction 12 stated that sexual motivation exists when “one of the purposes for which the defendant committed the crime was for his sexual gratification.” A rational trier of fact could have found that being touched as M.R.A. described would be offensive to “an ordinary person who is not unduly sensitive” even if it found that the touching was not for Beeks’s sexual gratification.

Viewed in the light most favorable to the State, and interpreted most strongly against the defendant, the facts are sufficient to prove each element of Assault in the Fourth Degree beyond a reasonable doubt.

#### **IV. CONCLUSION**

For the foregoing reasons, Beeks’s conviction should be affirmed.

DATED May 6, 2013.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I, Jessica L. Blye, attorney for Respondent STATE OF WASHINGTON, do hereby certify under penalty of perjury under the laws of the United States and the State of Washington, that a true and correct copy of the Respondent's Brief was sent by first class mail, postage prepaid on May 6, 2013 to: Cody Brian Beeks, PO Box 442, Lyle, WA 98635; and by email per agreement between the parties to: Marie J. Trombley, [marietrombley@comcast.net](mailto:marietrombley@comcast.net).

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