No. 31381-6-III

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Court of Appeals
Division III
State of Washington

COURT OF APPEALS, DIVISION III,
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent
v.

LYNN MARIE ARNHOLD

Appellant.

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

The State's evidence was insufficient to support the convictions for third degree assault and resisting arrest.

Issue Pertaining to Assignment of Error

Was the evidence insufficient to support the convictions for third degree assault and resisting arrest?

II. STATEMENT OF THE CASE

Lynn Marie Arnhold was charged by information with third degree assault of a law enforcement officer in count 1, second degree criminal trespass in count 2, and resisting arrest in count 3. (CP 186). The case proceeded to jury trial.

Janice Timbers, owner of the Horseshoe Trailer Park in Twisp, was in her residence at lot 19 on August 16, 2012. (12/13/12 RP 199). A neighbor told her Ms. Arnhold was in the park. (*Id*.). Knowing there was a warrant out for her arrest, Ms. Timbers called the police. (*Id*. at 200).

Meanwhile, Ms. Arnhold went into Ms. Timbers' residence. (12/13/12 RP 201). Officer Mike Hartnett had arrived and tried to enter about the same time Ms. Timbers opened the door. (*Id*. at 204). Ms. Arnhold was standing behind the door and put her hands up in the air as the officer approached, saying she could not be

arrested because she was an FBI informant. (*Id*. at 205). The officer told Ms. Arnhold she was under arrest and tried to cuff her. (*Id*.). He got the cuffs on and proceeded to take her outside. (*Id*.). Going down the stairs, she was putting up a little fight when Officer Ty Sheehan arrived to help. (*Id*. at 205-06).

Officer Sheehan knew there was a warrant out for Ms. Arnhold's arrest for failure to appear at a court date. (12/13/12 RP 213). Officer Sheehan said she was resisting so he took out a taser and put it on her upper shoulder. (*Id*. at 214). Ms. Arnhold was then compliant and the officers tried to escort her down the stairs. (*Id*. at 215). On the last stair, Officer Sheehan said she bit him on the back of his right bicep and got a bruise. (*Id*. at 216-17). They restrained Ms. Arnhold on the ground. (*Id*. at 218). Officer Hartnett took her to jail. (*Id*. at 219). The State rested.

Ms. Arnhold had vacated her trailer on lot 13 at the Horseshoe Trailer Park about 2-3 days before August 16, 2012. (12/13/12 RP 228). That day, she went to Ms. Timbers' trailer to arrange things for her personal belongings that were still in the residence on lot 13. (*Id*. at 229-30). Ms. Arnhold walked into Ms. Timbers' trailer after she acknowledged her. (*Id*. at 229).

Ms. Arnhold knew she had a warrant out for her arrest for failure to appear. (12/13/12 RP 231). Officer Hartnett went inside Ms. Timbers' trailer. (*Id*.). Ms. Arnhold testified she put her hands on her head and was compliant as she knew she had a warrant. (*Id*.). She was neither told she was under arrest nor to put her hands behind her back. (*Id*. at 232). All Officer Hartnett told her was she was now resisting arrest. (*Id*. at 232-33). The officer then put her left arm behind her back and started walking her down the stairs. (*Id*. at 233).

Outside the trailer, Officer Sheehan arrived and met them at the top of the stairs. (12/13/12 RP 234). He put the taser on her jugular. (*Id*.). Officer Hartnett continued to handcuff her other arm while talking with Officer Sheehan. (*Id*.). Ms. Arnhold said she did not bite Officer Sheehan. (*Id*.). The defense rested. (*Id*. at 238).

There were no exceptions taken to the court's instructions. (12/13/12 RP 241). The jury acquitted Ms. Arnhold of second degree criminal trespass, but convicted her of third degree assault and resisting arrest. (*Id*. at 265; CP 7, 21). This appeal follows.

III. ARGUMENT

A. The State's evidence was insufficient to support the convictions for third degree assault and resisting arrest.

In a challenge to the sufficiency of the evidence, the test is whether, viewing it in a light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). A claim of insufficient evidence admits the truth of the State's evidence and all reasonable inferences from it. *State v. Drum*, 168 Wn.2d 23, 25, 225 P.3d 237 (2010).

To prove third degree assault, the State had to prove intent. RCW 9A.36.131(1)(g); *State v. Williams*, 159 Wn.2d 298, 307-08, 244 P.3d 1018, *review denied*, 171 Wn.2d 1025 (2011). To prove resisting arrest, the State also had to prove intent, albeit a different intent, *i.e.*, to prevent or attempt to prevent lawful arrest, than for assault. RCW 9A.76.040, *State v. Cuellar*, 164 Wn. App. 701, 703, 262 P.3d 1251 (2011). Here, the State's evidence did not prove beyond a reasonable doubt the requisite intent for either offense.

Questions of credibility are determined by the trier of fact, but the existence of facts cannot be based on guess, speculation, or conjecture. *State v. Hutton*, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972). Even when viewed in a light most favorable to the State, there is no evidence, or reasonable inference from it, that Ms. Arnhold intended to assault Officer Sheehan or intended to prevent

or attempt to prevent her lawful arrest. *Williams*, 159 Wn. App. at 307; *Cuellar*, 164 Wn. App. at 703. Indeed, Ms. Arnhold knew she had a warrant out for her arrest and the inference from the evidence in the record is that she would not assault a police officer or resist arrest with that knowledge. Accordingly, the State's evidence was insufficient to prove the essential element of intent beyond a reasonable doubt. The convictions must be reversed. *Id*.

IV. CONCLUSION

Based on the foregoing facts and authorities, Ms. Arnhold respectfully urges this Court to reverse her convictions and dismiss the charges with prejudice.

DATED this 19th day of December, 2013.

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CERTIFICATE OF SERVICE

I certify that on December 19, 2013, I served a copy of the brief of appellant by email, as agreed, on Joe Caldwell at jcaldwell@co.okanogan.wa.us, and by first class mail, postage prepaid, on Lynn Arnhold, PO Box 1272, Brewster, WA 98812.