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Court of Appeals
Division III
State of Washington

NO. 32718-3-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

ADRIAN ANGUIANO, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 14-8-00173-7

BRIEF OF RESPONDENT

ANDY MILLER
Prosecuting Attorney
for Benton County

Andrew M. Howell, Deputy
Prosecuting Attorney
BAR NO. 45034
OFFICE ID 91004

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

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I. ISSUE PRESENTED

1. **Was the evidence sufficient to sustain Mr. Anguiano's conviction for Attempted Indecent Liberties?**

II. STATEMENT OF FACTS

On August 15, 2014, Adrian Anguiano was found guilty of Attempted Indecent Liberties for events that occurred on March 28, 2014. CP 42-43; RP at 47.

On March 28, 2014, D.T. (DOB: 08/25/1998), George Thacker, and Adrian Anguiano were inmates at Twin Rivers Group Home, a JJ&RA security facility, in Richland, Washington. RP at 5-8. D.T. and Mr. Anguiano shared lunch together on that day. RP at 22. D.T. told Mr. Anguiano that he was going to the front desk to get some lotion. RP at 22, 30. Mr. Anguiano told D.T. he had lotion in his room and that he would give it to him. RP at 30. D.T. and Mr. Anguiano left the lunchroom and went to Mr. Anguiano's room; no one else was in the room when they arrived. RP at 31.

Once inside the room, Mr. Anguiano told D.T. to "suck him up." RP at 31-32. D.T. said, "no." RP at 32. Mr. Anguiano told D.T., "it wasn't gay or nothing." *Id.* D.T. continued to say, "no." *Id.* Mr. Anguiano repeatedly said, "come on man, just do it." *Id.*

George Thacker, Mr. Anguiano's roommate, entered the room at this point. RP at 22, 32. Mr. Thacker shut the door and grabbed D.T. from behind. RP at 33. He put D.T. in a chokehold and wrestled him to the ground against the wall. RP at 32-33. Mr. Thacker had one arm around D.T.'s neck and the other around D.T.'s neck and arm. RP at 33. D.T. had one free arm he was used to wrestle Mr. Thacker and swing at Mr. Anguiano to keep him away. *Id.* At this point, Mr. Anguiano had his penis out of his pants and in his hand. *Id.* He continued to ask D.T. to "suck him up" and tell him "it wasn't gay." *Id.*

William Chapin was a residential counselor at the facility at this time. RP at 4. His responsibilities included writing treatment reports, site checks, and security. RP at 4-5. Mr. Chapin performed a population count and responsibilities check during lunch on March 28, 2014. RP at 7. Mr. Thacker was responsible for doing dishes that day. RP at 7-8. When Mr. Chapin could not locate Mr. Thacker, he went to Mr. Thacker's room. RP at 8. The doors to the rooms in the facility have a small window through which counselors can see into each room. RP at 11. Mr. Chapin looked through the window into Mr. Thacker and Mr. Anguiano's room. RP at 8. He saw Mr. Anguiano with his pants down and his penis in his hand. *Id.* Mr. Chapin opened the door to the room and found Mr. Thacker holding D.T. against the wall. *Id.* Mr. Chapin estimated there was

approximately three to four feet between D.T. and Mr. Anguiano. *Id.* Mr. Chapin testified at trial that D.T. appeared to be struggling to get away from Mr. Thacker and that he did not want to be in the situation. RP at 9.

Mr. Anguiano was charged by Information with Attempted Indecent Liberties. CP 1. A bench trial was held on August 15, 2014, before the Honorable Judge Cameron Mitchell. Judge Mitchell found Mr. Anguiano guilty of Attempted Indecent Liberties. CP 42-43.

Mr. Anguiano now appeals his conviction.

III. ARGUMENT

1. THE EVIDENCE WAS SUFFICIENT TO SUSTAIN MR. ANGUIANO'S CONVICTION FOR ATTEMPTED INDECENT LIBERTIES.

The State's evidence was sufficient to sustain a finding of guilt for Attempted Indecent Liberties. "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Thompson*, 69 Wn. App. 436, 444, 848 P.2d 1317 (1993). " 'Evidence is sufficient to support an adjudication of guilt in a juvenile proceeding if any rational trier of fact, viewing the evidence in a light most favorable to the State, could have found the essential elements of the crime beyond a reasonable doubt.' " *State v. Avila*, 102 Wn. App. 882, 895-96, 10 P.3d 486 (2000), quoting *State v. Echeverria*, 85 Wn. App. 777, 934 P.2d 1214 (1997).

A. Mr. Thacker facilitated in the commission of Attempted Indecent Liberties.

Mr. Thacker provided the force necessary to commit the crime of Indecent Liberties by forcible compulsion. “A person is guilty of indecent liberties when he or she knowingly causes another person to have sexual contact with him or her or another . . . [b]y forcible compulsion.” RCW 9A.44.100. “ ‘Forcible compulsion’ means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.” RCW 9A.44.010(6). “A person is guilty of an attempt to commit a crime if, with intent to commit a specific crime, he or she does any act which is a substantial step toward the commission of that crime.” RCW 9A.28.020(1). Under RCW 9A.08.020(2)(a), “[a] person is legally accountable for the conduct of another person when . . . acting with the kind of culpability that is sufficient for the commission of the crime, he or she causes an innocent or irresponsible person to engage in such conduct”

Here, Mr. Anguiano admits the evidence supports “the inference that by holding D.T. on the ground, Mr. Thacker facilitated or aided in the

commission of a crime.” Appellant’s Brief at 9. If a person causes an individual to aid in committing a crime, he is “legally accountable for the conduct of that person.” RCW 9A.08.020(2)(a). Mr. Anguiano acted with the kind of culpability that is sufficient for the commission of the crime and caused an irresponsible person, Mr. Thacker, to provide the forcible compulsion for Indecent Liberties when he attempted to have sexual contact with D.T. while Mr. Thacker held D.T. down.

B. Mr. Thacker knew what Mr. Anguiano was attempting to accomplish.

Mr. Anguiano is culpable for the force used by Mr. Thacker because Mr. Thacker was aware of what Mr. Anguiano was doing. “A person knows or acts knowingly or with knowledge when . . . he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense.” RCW 9A.08.010(b)(i). Mr. Thacker held D.T. down while Mr. Anguiano repeatedly asked D.T. to “suck him up.” RP at 32-33. Mr. Anguiano exposed his penis, held it in his hand, and asked D.T. to perform oral sex. RP at 33. Mr. Thacker and D.T. were facing Mr. Anguiano. RP at 8. There was only three to four feet between them as this occurred. *Id.* D.T. used his one free hand to swing at Mr. Anguiano. RP at 32-33. Under these circumstances, it is clear that Mr. Thacker had facts which would lead a reasonable person to believe Mr. Anguiano was attempting to make sexual contact with D.T. Mr. Thacker

could see and hear what Mr. Anguiano was doing and he continued to use force to hold D.T. down. This is the basis for finding that Mr. Thacker acted with knowledge that his action would facilitate the crime of Attempted Indecent Liberties. Accordingly, Mr. Anguiano is culpable for the force used by Mr. Thacker.

IV. CONCLUSION

The evidence was sufficient to support the conviction of Attempted Indecent Liberties beyond a reasonable doubt. The court did not err in its conclusion that Mr. Anguiano was guilty of Attempted Indecent Liberties by force. The conclusion and conviction should be upheld.

RESPECTFULLY SUBMITTED this 23rd day of March, 2015.

ANDY MILLER
Prosecutor



Andrew M. Howell, Deputy
Prosecuting Attorney
Bar No. 45034
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:

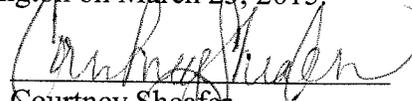
Janet Gemberling, PS
P.O. Box 9166
Spokane, WA 99209

E-mail service by agreement
was made to the following
parties:
admin@gemberlaw.com

Adrian Anguiano
1307 E. Oak Street
Othello, WA 99344

U.S. Regular Mail, Postage
Prepaid

Signed at Kennewick, Washington on March 23, 2015



Courtney Sheaffer
Appellate Secretary