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MARCH 10, 2017
Court of Appeals
Division III
State of Washington

No. 34153-4-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

LANCE THEOPOLIS SMITH,

Appellant

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR BENTON COUNTY

NO. 14-1-00835-3

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENT OF ERROR

- A. The State presented sufficient evidence to prove beyond a reasonable doubt that the defendant assaulted Officer Drew Florence.

II. STATEMENT OF FACTS

Darryl Smith testified that on July 16, 2014, he called and reported that his car was missing. Report of Proceedings (RP)¹ at 46. Mr. Smith testified that he suspected one of his kids had taken it, and that Lance Smith, the defendant, was driving it when it showed back up. RP at 46-47. Mr. Smith testified that the defendant was going west on Columbia Park Trail. RP at 48. Mr. Smith testified that when the defendant brought back the car, he was acting strangely, and appeared to be somewhat aggressive. RP at 51. Mr. Smith testified that his mother was visiting, felt uncomfortable, and left. RP at 51-52.

Richland Police Officer Joe Brazeau testified that he was working patrol on July 16, 2014, and was dispatched to a disturbance involving a stolen vehicle. RP at 55-57. Officer Brazeau testified that he located the defendant walking westbound on Columbia Park Trail near the corner of Columbia Park Trail and North Columbia Center Boulevard in the parking lot of Kimo's Restaurant. RP at 57-58. Officer Brazeau testified that the

defendant appeared agitated, and Officer Brazeau started asking questions, which the defendant began answering then began to make statements which were not in the context of what Officer Brazeau was asking him. RP at 58-59. Officer Brazeau testified that the defendant would flex his muscles, stare, and lean in while answering him in a loud, almost yelling voice. RP at 59. Officer Brazeau testified that he told the defendant he was being detained, and that the defendant began to yell that he was detained, and he asked if Officer Brazeau was a king. *Id.* Officer Brazeau testified that he had no backup officer present at this point. *Id.*

Officer Brazeau testified that he was told there was probable cause to arrest the defendant for taking a motor vehicle, and that he could tell that the defendant was quickly losing self-control. RP at 60. Officer Brazeau reported that he told the defendant that he was under arrest, closed the distance with him, and grabbed the defendant's wrist in order to take him into custody. *Id.* Officer Brazeau testified that the defendant was fighting, swinging to get away, and not complying at all with verbal commands. RP at 61. Officer Brazeau testified that Officers Jones and Sullivan assisted while the defendant struggled on the ground, and that once the defendant was handcuffed he broke contact. RP at 61, 63. Officer Brazeau testified that Officers Crouch and Florence arrived, and that he

¹ Unless otherwise indicated, RP refers to the verbatim report of proceedings of the jury

was still in the general area when the defendant was lifted up to be patted down for weapons or contraband. RP at 63. Officer Brazeau testified that Officer Crouch was conducting a pat-down, and that he was within a foot or two, and the defendant leapt up, swung his head, and struck Officer Florence in the face. RP at 64.

Kennewick Police Department Officer Rebecca Jones testified that she was working on July 16, 2014, and was looking for Lance Smith. RP at 77-78. Officer Jones testified that when she arrived at Kimo's, she saw the defendant speaking with Officers Brazeau and Sullivan. RP at 82. Officer Jones testified that she attempted to control the defendant's legs once Officer Brazeau grabbed his wrist to detain him in handcuffs. RP at 83. Officer Jones testified that after the defendant was handcuffed, Richland officers assisted and lifted him up to walk him to a patrol vehicle, that she did not have hands on him, and that the defendant abruptly thrust his upper body into the air in kind of backward motion. RP at 83-84. She testified that she did not see any contact between the defendant and anyone else, and that afterward he was taken back to the ground. RP at 84.

Kennewick Police Department Officer Josh Sullivan testified that when he arrived at Kimo's on July 16, 2014, he walked up to where

trial held on February 1, 2016.

Officer Brazeau was speaking with the defendant. RP at 92-94. Officer Sullivan testified that after Officer Brazeau moved to put the defendant under arrest, he grabbed the defendant's other arm. RP at 95. Officer Sullivan testified that he went to check the defendant's handcuffs to check that they were double-locked to keep them from being over-tightened. RP at 97-98. Officer Sullivan testified that his attention was on the defendant's arms and hands, and that the defendant tensed and jumped, but that he did not see the defendant physically strike anyone. RP at 98.

Richland Police Department Officer Jason Crouch testified that he arrived at Kimo's on July 16, 2014, and saw the defendant handcuffed with Officers Brazeau, Jones, and Sullivan around him. RP at 108-09. Officer Crouch stood the defendant up, and holding onto the defendant's right arm began searching his right side. RP at 110. Officer Crouch testified that Officer Florence came to assist and as he leaned in to help, the defendant head-butted Officer Florence in the face. *Id.* Officer Crouch testified that he saw the defendant's head strike Officer Florence. *Id.* Officer Crouch also testified that he took photos of Officer Florence that day, which were admitted as Exhibits 1 and 2. Exs. 1, 2²; RP at 113. Officer Crouch also examined the defendant's face and did not see any obvious injuries or marks on his forehead. RP at 121.

Richland Police Department Officer Drew Florence testified that he responded to the Kimo's parking lot on July 16, 2014, and saw a group of officers standing there with a male subject who was being stood up with his hands cuffed behind his back. RP at 127-28. Officer Florence was wearing a patrol uniform. RP at 128. Officer Florence testified that Exhibits 1 and 2 showed the uniform he was wearing that day. Exs. 1, 2; RP at 129. Officer Florence testified that he tried to assist by taking the defendant's arm while Officer Crouch searched him. RP at 129. Officer Florence testified that the defendant reared up with his head using a swinging motion and struck him underneath his eye with the defendant's forehead. RP at 129-30. Officer Florence testified that the defendant threw his body weight forward. RP at 130.

Officer Florence testified that where he was struck swelled up a little bit and was red for a little while but had no permanent injury. RP at 131. He also testified that the injury was visible in the photos. RP at 131; *see* Exs. 1, 2. While the defendant was at Kadlec Regional Medical Center, Officer Florence also heard the defendant tell one of the doctors that he had head-butted a police officer and probably should not have done that. RP at 132.

² The exhibit list (CP 145) incorrectly identifies Officer Drew Florence as Officer (Drew) Sneyd. Officer Florence identified himself in this exhibit. RP at 129.

The defendant took the stand in his own defense. RP at 147-48. He testified that he was completely calm and showed no resistance to them. RP at 152. The defendant stated, “[T]his one cop, he managed to walk right in front of me and his face was like right here (indicating) and I looked over and I just went like that real quick (indicating).” *Id.* The defendant testified that he got spooked and bumped him right under the eye. *Id.* The defendant testified that it was an accident. RP at 154. The defendant testified that he was then slammed onto the asphalt twice, that one of the cops jumped on his back, and one of the cops grabbed his hair and started smashing his face into the asphalt and split both sides of his skull open. RP at 153. He also stated that he was bleeding from his skull. RP at 155. The defendant also testified that he was not on the ground before the contact between his head and the officer. RP at 155-156.

The defendant further testified that his statement at the hospital was that he was told that he head-butted a cop and that he shouldn’t have done that, but that he did not know what happened. RP at 161. He stated that he did not head-butt the officer intentionally. RP at 159. He also stated that he did not yell at them at all until he was on the ground. RP at 161.

The jury found the defendant guilty of Assault in the Third Degree. CP 186. This appeal follows.

III. ARGUMENT

A. The State presented proof beyond a reasonable doubt that the defendant assaulted Officer Florence.

1. The State presented sufficient evidence of assault.

Evidence is sufficient to support a finding of guilt if, after viewing the evidence in the 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, 221-22, 616 P.2d 628 (1980).

“When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (citing *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977)).

An inquiry on appeal regarding the sufficiency of the evidence does not require the reviewing court to determine whether it believes the evidence at trial proves guilt beyond a reasonable doubt. *Green*, 94 Wn.2d at 221. Instead, the reviewing court must determine whether any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt based on the evidence presented at trial. *Id.*

In evaluating the sufficiency of the evidence on appeal, the court must defer to the trier of fact to resolve conflicts in testimony, weigh

evidence, and draw reasonable inferences therefrom. *State v. Hayes*, 81 Wn. App. 425, 430, 914 P.2d 788, *review denied*, 130 Wn.2d 1013, 928 P.2d 413 (1996). Circumstantial evidence is not to be considered any less reliable than direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980) (citing *State v. Gosby*, 85 Wn.2d 758, 539 P.2d 680 (1975)). The specific criminal intent may be inferred from the conduct where it is plainly indicated as a matter of logical probability. *Id.*

In this case, five of the six witnesses for the State testified that the defendant was standing, handcuffed, and moved to strike Officer Florence while he was being searched. The five witnesses, all seeing the interaction from different perspectives, saw the defendant's movement differently. All five officers saw deliberate motion by the defendant. Multiple witnesses, Officers Florence, Crouch, and Brazeau, saw the defendant strike Officer Florence with his head. The jury heard all the testimony and found the defendant guilty of the crime of Assault in the Third Degree.

2. The State presented sufficient evidence of the defendant's intent.

The defendant cites *State v. Hall*, 104 Wn. App 56, 14 P.3d 884 (2000), for the proposition that assault is an intentional act and requires the specific intent to assault another. Br. of Appellant at 7. However, *Hall*

distinguishes between the forms of assault and the requirement of specific intent:

Washington recognizes three forms of assault: (1) assault by actual battery; (2) assault by attempting to inflict bodily injury on another while having apparent present ability to inflict such injury; and (3) assault by placing the victim in reasonable apprehension of bodily harm. *State v. Byrd*, 125 Wn.2d 707, 712–13, 887 P.2d 396 (1995); *see also State v. Wilson*, 125 Wn.2d 212, 218, 883 P.2d 320 (1994). Assault by battery does not require specific intent to inflict harm or cause apprehension; rather, battery requires intent to do the physical act constituting assault. [*State v. Daniels*, 87 Wn. App. 149, 155, 940 P.2d 690 (1997)]. The other two forms of assault, however, require specific intent that the defendant intended to inflict harm or cause reasonable apprehension of bodily harm. *State v. Eastmond*, 129 Wn.2d 497, 500, 919 P.2d 577 (1996).

Hall, 104 Wn. App. at 62.

The jury in this case was instructed that “[a]n assault is an intentional touching or striking of another person” CP 181. The jury was also instructed that “[a] person acts with intent or intentionally when acting with the objective or purpose to accomplish a result that constitutes a crime.” CP 182. A defendant is presumed to intend the natural and probable consequences of his acts. *State v. Stroh*, 91 Wn.2d 580, 583, 588 P.2d 1182 (1979).

Here, the defendant moved deliberately. This determination is based on the testimony of all the witnesses who observed the defendant’s

actions. The jury did not rely on speculation but rightly found the defendant acted with intent to assault Officer Florence.

IV. CONCLUSION

The State presented sufficient evidence to prove that the defendant acted intentionally when he assaulted Officer Florence and proved beyond a reasonable doubt that he committed Assault in the Third Degree. Therefore, his conviction should be affirmed.

RESPECTFULLY SUBMITTED this 10th day of March, 2017.

ANDY MILLER
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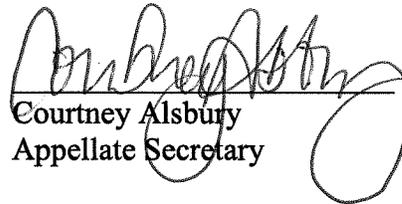
CERTIFICATE OF SERVICE

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:

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Signed at Kennewick, Washington on March 10, 2017.


Courtney Alsbury
Appellate Secretary