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Court of Appeals
Division III
State of Washington
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No. 35145-9-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent

v.

RORY ALAN STAR,

Appellant

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

NO. 16-1-01112-1

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. The trial court did not violate any rights of the defendant guaranteed by the United States or State of Washington constitutions; the evidence was sufficient for conviction on both counts.

II. STATEMENT OF FACTS

On October 19, 2016, the defendant entered a coffee shop in Richland, Washington. RP at 102. Inside, the defendant attempted to make conversation with a patron of the coffee shop, Ms. Sara Wright. *Id.* The defendant was either not speaking clearly or coherently. *Id.* Ms. Wright either did not follow the conversation, or otherwise attempted to ignore the defendant. RP at 103. In doing so, Ms. Wright either smiled or nodded, and then attempted to return to what she was doing. *Id.* This lasted several awkward minutes. *Id.* Ms. Wright did not personally know the defendant. *Id.* The defendant exited the coffee shop, but Ms. Wright could still view the defendant through a window. *Id.* Apparently, the defendant was able to see Ms. Wright through the window as well and attempted to make eye contact or otherwise engage Ms. Wright's attention. *Id.* The defendant re-entered the coffee shop, now inexplicably angry. RP at 103-04. The defendant paced and cursed. RP at 104. He directed his profanity at Ms. Wright. *Id.* Ms. Wright testified at trial of what happened next:

Q. Did he say anything to you at that time?

A. He was angry and using profanity directed at me.

Q. Can you please tell the jury what the profanity he was saying to you?

A. You bitch, F-ing bitch. Just targeted towards me.

Q. So he came back in the store, you said he's upset, pulled a chair up next to you and starts calling you an F-ing bitch. Then what happened next?

A. He said, do you want to see what's in my pocket? I didn't know what to say, and that's when he pulled out the knife and was kind of like shaking it in my face.

Id.

At this point, at least one other person in the coffee shop had become concerned about the angry defendant and the knife he was pointing directly at Ms. Wright. RP at 84. The defendant was holding the knife upright, directly at Ms. Wright, and was standing shoulder-to-shoulder with her, about a foot away. RP at 105-07. The relative positions of the defendant and Ms. Wright were demonstrated before the jury, as was the position of the knife the defendant was holding while he was spitting profanities at Ms. Wright. RP at 106. Here, we have an unprovoked, very angry stranger who was holding a knife, cursing, and standing very close to Ms. Wright, who was understandably "very fearful" at this moment in time. RP at 107. At this moment, no one knew what the defendant was about to do: "I just was terrified that I felt targeted. . . . I was fearful for my life. I was trying to lock myself in, trying to find a weapon to defend myself" RP at 109.

Thankfully, Ms. Wright was able to edge herself away from the defendant, who was soon distracted by another patron in the coffee shop, Mr. Robert Schweiger. RP at 81, 86-87. Mr. Schweiger already took notice of the defendant's troubling behavior and was presently calling 911. RP at 84. While Ms. Wright retreated to behind the customer counter with the employees, Mr. Schweiger was on the telephone with a dispatcher trying to discreetly provide information while not further angering the defendant. RP at 87-88. The defendant approached Mr. Schweiger rapidly, knife in hand. RP at 94. The defendant was cursing and holding out the knife as he approached. RP at 94-95. The defendant punched a display stand in the middle of the coffee shop in his approach toward Mr. Schweiger. RP at 94. Mr. Schweiger's mind went to possible defense weapons, or perhaps a means of escape, but Mr. Schweiger certainly "didn't want to put [himself] in a position where [he could] be backed into a corner" RP at 89-90. According Mr. Schweiger, the defendant was "definitely a threat at that time." RP at 90.

The police arrived on scene, and after a brief struggle, took the defendant into custody. RP at 36-37. The defendant was ultimately charged with two counts of Assault in the Second Degree, a violation of RCW 9A.36.021(1)(c); one count for Ms. Wright, one for Mr. Schweiger.

CP 1-2. The defendant was found guilty on both counts by a jury of his peers, and thereafter sentenced to 17 months on each charge. CP 78, 83.

III. ARGUMENT

A. Standard on appeal.

Due process requires that the State prove beyond a reasonable doubt each element of the crimes charged. *State v. O'Hara*, 167 Wn.2d 91, 105, 217 P.3d 756 (2009). Challenges to the sufficiency of evidence ask whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). This standard defers questions of credibility, persuasiveness, and conflicting testimony to the original finder of fact. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992). Challenges to the sufficiency of evidence also admit the verity of the facts—and all inferences that reasonably can be drawn therefrom—and argue that despite the truth of those facts, they stand insufficient to support a conviction. *State v. Condon*, 182 Wn.2d 307, 314, 343 P.3d 357 (2015).

To be guilty of Assault in the Second Degree, an individual must “[a]ssault[] another with a deadly weapon.” RCW 9A.36.021(1)(c). The State of Washington recognizes three definitions of assault, to include the act of “putting another in apprehension of harm whether or not the actor

actually intends to inflict or is capable of inflicting that harm.” *State v. Hupe*, 50 Wn. App. 277, 282, 748 P.2d 263 (1988). The definition of deadly weapon includes two distinct categories: deadly weapons per se, and deadly weapons in fact. *State v. Taylor*, 97 Wn. App. 123, 126, 982 P.2d 687 (1999); RCW 9A.04.110(6). As it is not a deadly weapon per se, to be considered a deadly weapon a knife must be supported by the facts of the case; specifically, there must be some manifestation of willingness to use the knife to harm. *In re Martinez*, 171 Wn.2d 354, 365-66, 256 P.3d 277 (2011); *see also State v. Gotcher*, 52 Wn. App. 350, 759 P.2d 1216 (1988).

B. There was sufficient evidence to support conviction on both counts.

For his own reasons, the defendant became angry, and it appeared to have been directed toward Ms. Wright. RP at 102-05. The defendant came near to her side, still spewing profanities. RP at 106-07. Would it have ended there, but instead the defendant dramatically drew a large knife and pointed it at Ms. Wright while still shouting curses at her. RP at 106. The defendant never made a slashing or stabbing motion with the knife toward Ms. Wright. The defendant was within arm’s reach, within striking distance of Ms. Wright, and his actions clearly expressed a violent antagonism toward Ms. Wright. RP at 107.

Here, there is a clear manifestation of a willingness to use the knife. *Cf. Gotcher*, 52 Wn. App. at 356-57 (holding that a burglar’s “fumbling” with something on his right side, and a switchblade found in his right coat pocket, was sufficient evidence of a manifestation to use a knife as a deadly weapon). While his personal motivation to do so may not be clear, the defendant’s actions exhibited a clear intent to place Ms. Wright in fear of bodily injury, which was the result.

The defendant contends that his conduct toward Mr. Schweiger was briefer and less aggressive than his conduct toward Ms. Wright, and as such, is insufficient for a finding of guilt. Br. of Appellant at 1, 7. The State, and the evidence introduced at trial, disagree with the defendant.

There is no temporal element in the charge of Assault in the Second Degree, and it is immaterial that the defendant spent the lion’s share of his time in the coffee shop menacing anyone in sight and assaulting someone other than Mr. Schweiger—assault can happen in an instant. Nor was his conduct any less aggressive, perhaps even more so; in his rapid approach toward Mr. Schweiger—again, knife in hand—the defendant punched a display and continued to spit profanities at Mr. Schweiger as the distance between the two closed. RP at 94. Again, this is a clear expression of violence and anger, showing an open manifestation

of intent to use the knife to cause harm, and his actions clearly exhibited an intent to place Mr. Schweiger in fear of harm.

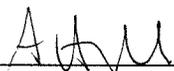
There is a reasonable inference from his actions that day that the defendant intended to place both Ms. Wright and Mr. Schweiger in fear of harm.

IV. CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court affirm the jury finding of guilt on both counts.

RESPECTFULLY SUBMITTED on May 16, 2018.

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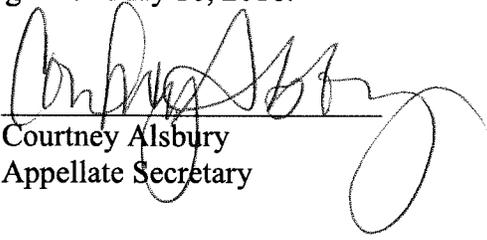
CERTIFICATE OF SERVICE

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 May 16, 2018.



Courtney Alsbury
Appellate Secretary

BENTON COUNTY PROSECUTOR'S OFFICE

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