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Court of Appeals
Division III
State of Washington
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NO. 36559-0-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

STEVEN WHITE,
Appellant.

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

The Honorable John O. Cooney, Judge

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. ASSIGNMENTS OF ERROR.....	1
Issues Presented on Appeal.....	1
B. STATEMENT OF THE CASE.....	2
Substantive Facts.....	2
Procedural Facts.....	3
C. ARGUMENT.....	4
1. THE TRIAL COURT ERRED WHEN IT DENIED MR. WHITE’S MOTION TO DISMISS BECAUSE THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO PROVE THE ELEMENTS OF ASSAULT IN THE THIRD DEGREE BEYOND A REASONABLE DOUBT	4
a. The video room in the Spokane County Jail is not a “courtroom” as contemplated in RCW 9A.36.031(1)(k).....	6
b. The state presented insufficient evidence to prove beyond a reasonable doubt that the assault occurred “immediately adjacent” to a courtroom being used for court proceedings...9 Not Being Used For Court Proceedings.....	11
D. CONCLUSION.....	12

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

<i>In re Heidari</i> , 174 Wn.2d 288, 274 P.3d 366 (2012)	8, 9, 11
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980)	5, 9
<i>State v. Jackson</i> , 82 Wn. App. 594, 918 P.2d 945 (1996)	4
<i>State v. Kintz</i> , 169 Wn.2d 537, 238 P.3d 470 (2010)	7
<i>State v. McReynolds</i> , 142 Wn. App. 941, 176 P.3d 616 (2008)	5

RULES, STATUTES, AND OTHERS

https://www.merriam-webster.com/dictionary/adjacent	10
https://www.merriam-webster.com/dictionary/courtroom	7
https://www.merriam-webster.com/dictionary/immediately	10
RCW 2.28.200	5
RCW 9A.36.031	1, 3, 5, 6, 7, 8, 9, 10, 11, 12
RCW 9A.36.041	9
Wash. Const. art. I, § 10	8

A. ASSIGNMENTS OF ERROR

1. The trial court erred when it denied Mr. White's motion to dismiss because the state failed to present sufficient evidence to prove beyond a reasonable doubt that the video rooms at the Spokane County jail are "courtrooms" for the purposes of RCW 9A.36.031(1)(k).
2. The trial court erred when it denied Mr. White's motion to dismiss because the state failed to present sufficient evidence to prove beyond a reasonable doubt that the assault occurred "immediately adjacent" to a courtroom.

Issues Presented on Appeal

1. Did the state present sufficient evidence to prove beyond a reasonable doubt that Mr. White assaulted Mr. Thompson immediately adjacent to a courtroom when the jail video room does not contain a judge, is not used to hear testimony or present evidence, and is not accessible to the public?
2. Did the state present sufficient evidence to prove beyond a reasonable doubt that the assault occurred "immediately adjacent" to a courtroom when the holding

cell where the assault occurred is not directly connected to any courtroom that was being used for court proceedings?

B. STATEMENT OF THE CASE

Substantive Facts

The Spokane County Jail contains a “jail courtroom” that is connected to the Spokane County Courthouse by closed circuit television. RP 39. Judges regularly preside over court hearings taking place in the jail by video to avoid the unnecessary transport and restraint of inmates. RP 39-40. Before bringing inmates into the “jail courtroom,” the corrections staff brings them into a holding cell where they wait for their case to be called. RP 40.

On January 9, 2018, Freddie Thompson and Steven White were confined in a holding cell waiting for their video court hearings to begin at the Spokane County Jail’s Superior Court video room. RP 37, 97. Mr. Thompson was already seated on a bench in the holding cell when corrections deputies brought Mr. White into the room. RP 100. Mr. White began to whisper to some other inmates, but Mr. Thompson could not hear what he was saying. RP 100. Mr. White stopped talking to the other inmates and accused Mr.

Thompson of raping someone named “Marcella.” RP 104. Mr. White then approached Mr. Thompson and told him to stand up. RP 101. As Mr. Thompson was beginning to stand, Mr. White punched him multiple times in the head and face. RP 102-03. Mr. Thompson yelled for the guards to intervene, and corrections deputies entered the cell and broke up the fight. RP 102.

Procedural Facts

The state charged Mr. White with one count of Assault in the Third Degree based on an allegation that the assault occurred in a “waiting area or corridor immediately adjacent to a courtroom, jury room, or judge’s chamber.” CP 3; RCW 9A.36.031(1)(k). Mr. White elected to proceed to a jury trial. CP 57.

Mr. White moved to dismiss the charge at the close of the state’s case-in-chief on the basis that the state had failed to present sufficient evidence that the “jail courtrooms” in the Spokane County Jail qualify as “courtrooms” for the purposes of RCW 9A.36.031(1)(k), and also failed to prove that the assault occurred immediately adjacent to a courtroom, being used for judicial proceedings. RP 116. The trial court denied Mr. White’s motion to dismiss. RP 133.

In its instructions to the jury, the trial court included instructions on Assault in the Third Degree and the lesser included offense of Assault in the Fourth Degree. RP 91. The jury found Mr. White guilty of Assault in the Third Degree. RP 188.

The trial court sentenced Mr. White to 51 months in prison to be run consecutive to another sentence for a separate robbery conviction. RP 208. Mr. White filed a timely notice of appeal. CP 140.

C. ARGUMENT

1. THE TRIAL COURT ERRED WHEN IT DENIED MR. WHITE'S MOTION TO DISMISS BECAUSE THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO PROVE THE ELEMENTS OF ASSAULT IN THE THIRD DEGREE BEYOND A REASONABLE DOUBT

When a defendant appeals the denial of his motion to dismiss at the conclusion of the state's case-in-chief, courts review the alleged error as a challenge to the sufficiency of the state's evidence. *State v. Jackson*, 82 Wn. App. 594, 608-09, 918 P.2d 945 (1996). "The evidence is reviewed using the most complete factual basis available at the point in time the sufficiency challenge is raised." *State v. McReynolds*, 142 Wn. App. 941, 947, 176 P.3d

616 (2008) (citing *Jackson*, 82 Wn. App. at 608-09). The court's inquiry is whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *McReynolds*, 142 Wn. App. at 947 (citing *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)).

To convict a defendant of Assault in the Third Degree, the state must prove that (1) the defendant assaulted another person, (2) the assault was committed "in a waiting area or corridor immediately adjacent to a courtroom" during the times when the courtroom is being used for court proceedings, **and** (3) there was signage displayed at any **public entrance** to the courtroom notifying the public of possible penalties for Assault in the Third Degree (emphasis added). RCW 9A.36.031(1)(k). The signage must comply with RCW 2.28.200, which states that "The signage shall be prominently displayed at any public entrance to a courtroom." RCW 2.28.200(2).

Mr. White did not dispute that he assaulted Mr. Thompson. RP 116-17. However, he asserted that the state failed to prove the elements of Assault in the Third Degree because: the evidence did not prove that the video room in the jail qualifies as a "courtroom"

for the purposes of RCW 9A.36.031(1)(k); it did not prove that the assault occurred “immediately adjacent” to a courtroom; and there was no public entrance to the alleged “courtroom.” RP 117-20.

- a. The video room in the Spokane County Jail is not a “courtroom” as contemplated in RCW 9A.36.031(1)(k)

As applied in Mr. White’s case, RCW 9A.36.031(1)(k) elevates what would normally be a misdemeanor Assault in the Fourth Degree to the felony charge of Assault in the Third Degree if the assault occurs in a “waiting area or corridor immediately adjacent to a courtroom, jury room, or judge’s chamber during the times when a courtroom, jury room, or judge’s chamber is being used for judicial purposes during court proceedings.” RCW 9A.36.031(1)(k).

The record in Mr. White’s case establishes that there was no jury room or judge’s chamber in the jail where this assault occurred, nor was there a public entrance. RP 66. The state’s case depended on its ability to prove that the video room in the jail where Mr. White and Mr. Thompson were set to appear, qualifies as a “courtroom” under RCW 9A.36.031(1)(k). The term “courtroom” is not defined in Washington case law or statutes.

Courts may determine the plain meaning of statutory terms from their dictionary definitions. *State v. Kintz*, 169 Wn.2d 537, 547, 238 P.3d 470 (2010). In the dictionary, the term “courtroom” is defined as “a room in which a court of law is held.” <https://www.merriam-webster.com/dictionary/courtroom>. The room the state alleges to be a “courtroom” in this case is part of the Spokane County Jail and is not in an actual courthouse, nor an actual courtroom. RP 37.

The record establishes that the room was not used for trials or any proceedings involving witnesses or a jury. RP 66-67. The record also shows that the room only contains a few chairs for the inmates and a table for them to sit with defense counsel. RP 41. There is no judge present in the room because the presiding judge is in a separate building and is only visible to defendants on a television screen. RP 41-42, 66. Finally, the video room alleged to be a courtroom is not accessible to the public. RP 113.

The video room in the Spokane County Jail does not constitute a “courtroom” for the purposes of prosecuting a defendant under RCW 9A.36.031(1)(k). The video room lacks features that are essential for any court to administer justice such

as a judge, jury box, and witness stand. Furthermore, the room is inaccessible to the public.

Under Article I, Section 10 of the Washington State Constitution, courtrooms must be open to the public. Wash. Const. art. I, § 10. RCW 9A.36.031(1)(k) provides the state must prove beyond a reasonable doubt signage at the entrance of the “courtroom” for the public. Because the setting in this case was a jail, there was no public entrance.

The state’s inability to prove this element defeats the conviction because the video room where defendants are arraigned is not open to the public and therefore cannot be deemed a “courtroom” under our state and federal constitutions.

The state presented insufficient evidence to prove beyond a reasonable doubt the essential element that the assault in this case occurred adjacent to a “courtroom”. When an appellate court reverses for insufficient evidence and the jury was instructed on a lesser included offense, the court may enter judgment on the lesser offense and remand for resentencing on that charge when the jury necessarily found each element of that offense in reaching its verdict. *In re Heidari*, 174 Wn.2d 288, 292-94, 274 P.3d 366 (2012)

(citing *Green*, 94 Wn.2d at 234).

In this case, the jury necessarily found the elements of Assault in the Fourth Degree. The elements of Assault in the Fourth Degree are that (1) the defendant assaulted another person, and (2) the assault occurred in Washington. RCW 9A.36.041(1). Neither of those elements were disputed during Mr. White's trial. However, because the state failed to prove that the assault occurred near a courtroom, this court should reverse Mr. White's conviction for Assault in the Third Degree and remand for resentencing on the lesser offense of Assault in the Fourth Degree. *Heidari*, 174 Wn.2d at 292.

- b. The state presented insufficient evidence to prove beyond a reasonable doubt that the assault occurred "immediately adjacent" to a courtroom being used for court proceedings

Even if this court finds that the video room at the Spokane County Jail does constitute a "courtroom" for the purposes of RCW 9A.36.031(1)(k), the state still did not present sufficient evidence to prove Assault in the Third Degree because it failed to prove that the assault occurred "immediately adjacent" to a courtroom. Like the term "courtroom," the phrase "immediately adjacent" is not defined in a statute or case law. The term "adjacent" is defined as "having a

common endpoint or border” and “immediately preceding or following.” <https://www.merriam-webster.com/dictionary/adjacent>. The term “immediately” is defined as “in direct connection or relation.” <https://www.merriam-webster.com/dictionary/immediately>. In this case, the evidence shows that the holding cell where the assault occurred does not share a common border with a courtroom, and is not directly connected to a courtroom so as to make it “immediately adjacent” to a courtroom for the purposes of proving the elements of Assault in the Third Degree.

The record demonstrates that the holding cell where the assault occurred is in a different area than the video room. To reach the room where Mr. White was scheduled to appear from his holding cell, he had to walk down three different hallways and through a separate video room used for municipal and district court hearings. RP 63-64.

The legislature made the conscious decision to include the term “immediately” just before “adjacent” in RCW 9A.36.031(1)(k). This decision suggests that the statute is only intended to apply when an assault occurs in an area directly accessible from a courtroom and not in scenarios like Mr. White’s where the assault

occurred in a separate area that happens to be in the same building as a courtroom.

Even when the evidence is viewed in a light most favorable to the state, the state failed to prove that the assault occurred “immediately adjacent” to the video room. Rather, the evidence established that Mr. White was held in a holding cell in jail three hallways away from the video room. RP 63-64.

Not Being Used For Court Proceedings

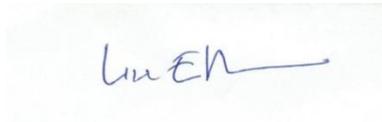
Finally, assuming for the sake of argument that the municipal/district court video room qualifies as a courtroom under RCW 9A.36.031(1)(k), the state’s own witnesses admitted that it was not being used for judicial proceedings at the time of the assault. RP 46-47. Accordingly, the state failed to prove beyond a reasonable doubt that the assault occurred “immediately adjacent” to a courtroom being used for judicial proceedings, and therefore failed to provide sufficient evidence to prove the elements of Assault in the Third Degree. This court should reverse his conviction for that offense and order resentencing on the lesser included offense of Assault in the Fourth Degree. *Heidari*, 174 Wn.2d at 292.

D. CONCLUSION

The state failed to present sufficient evidence to prove the essential elements of Assault in the Third Degree. It failed to prove that the video room at the Spokane County Jail is a “courtroom”, and that that the assault occurred in a room “immediately adjacent” to the courtroom-both essential elements of RCW 9A.36.031(1)(k). Thus, the trial court erred when it denied Mr. White’s motion to dismiss at the close of the state’s case-in-chief. This court should reverse his conviction for Assault in the Third Degree and remand for resentencing on the lesser included offense of Assault in the Fourth Degree.

DATED this 29th day of April 2019.

Respectfully submitted,

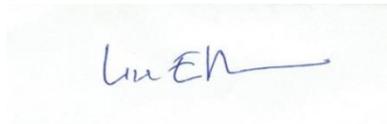
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SPENCER BABBIT, WSBA No. 51076
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I, Lise Ellner, a person over the age of 18 years of age, served the Spokane County Prosecutor's Office SCPAappeals@spokanecounty.org and Steven White, DOC#753742, Washington Corrections Center, PO Box 900 Shelton, WA 98584a true copy of the document to which this certificate is affixed on April 29, 2019. Service was made by electronically to the prosecutor and Steven White by depositing in the mails of the United States of America, properly stamped and addressed.

A handwritten signature in blue ink that reads "Lise Ellner" followed by a horizontal line.

Signature

LAW OFFICES OF LISE ELLNER

April 29, 2019 - 9:49 AM

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