

NO. 62896-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

OLEKSANDIR YUSIPOVICH,

Appellant.

2010 MAR 19 PM 5:03  
COURT OF APPEALS  
STATE OF WASHINGTON  
3

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE DEBORAH FLECK

**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. During its prosecution of the defendant for the crime of Indecent Liberties by Forcible Compulsion, the State presented undisputed evidence that the defendant engaged in physical force by physically pulling the victim out of the car, cornering and pinning her, and grabbing her face prior to engaging in sexual contact with her. Viewed in a light most favorable to the State, did the State present sufficient evidence to establish the defendant's guilt for the charged offense?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The defendant, Oleksandir Yusipovich, was charged by information with one count of Indecent Liberties by Forcible Compulsion. CP 104, 123. A jury convicted Yusipovich as charged. CP 122. The court sentenced him within the standard range sentence of 60 months. CP 124-34.

**2. SUBSTANTIVE FACTS**

The charge of indecent liberties by forcible compulsion arose from a February 16, 2006 incident at The Fish Gallery and Pets store in Kent. 4RP 72-73. While shopping at a pet store, K.F. made eye contact with the defendant, Oleksandir Yusipovich. 4RP 76. After K.F. returned to her car, Yusipovich approached her and asked if she liked animals. 4RP 80. K.F. told Yusipovich

she liked animals. 4RP 80. Yusipovich then gave her an unexpected and unwanted hug. 4RP 80. K.F. was a little scared so she went to her car, opened the door, and got in. 4RP 81. When K.F. tried to shut the door, Yusipovich got in the way and prevented her from shutting her door. 4RP 81. He then reached into the car, grabbed K.F. by the shoulders and the neck area, and physically pulled her out of the car. 4RP 82. K.F. was in shock, completely numb, couldn't move, couldn't talk, and had no idea what was happening. 4RP 82. Yusipovich then cornered her and pinned her to the car so she couldn't move. 4RP 82-83. He then grabbed K.F.'s face and started kissing and licking her face. 4RP 83. He then moved down to her chest, pulled off her shirt and bra, and began kissing and licking K.F.'s chest. 4RP 83. K.F. then snapped out of her freeze and pushed Yusipovich away, got into her car, and closed and locked her doors. 4RP 83.

When K.F. was being pulled out of the car, her hip hit the steering wheel and caused a baseball size bruise for about two weeks. 4RP 103. When Yusipovich grabbed her face with both hands while kissing and licking her face, the tightness of the his grip caused swelling to K.F.'s tooth. 4RP 104.

C. **ARGUMENT**

1. **THE EVIDENCE ESTABLISHED YUSOPOVICH'S GUILT FOR INDECENT LIBERTIES BY FORCIBLE COMPULSION.**

Yusipovich asserts on appeal that the State's evidence was insufficient to establish his guilt for Indecent Liberties by Forcible Compulsion. His challenge to the evidence establishing forcible compulsion is misguided. Evidence is

sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements proved beyond a reasonable doubt. State v. Hendrickson, 129 Wn.2d 61, 81, 917 P.2d 563 (1996). A challenge to the sufficiency of the evidence admits the truth of the State's evidence. State v. Finch, 132 Wn.2d 792, 831, 975 P.2d 967 (1999). All reasonable inferences from the evidence are drawn in favor of the State and against the defendant. Finch, 137 Wn.2d at 831.

Here, the State asserted that Yusipovich used forcible compulsion while engaging in sexual contact. As the deputy prosecutor noted in his closing argument, the force was when K.F. tried to get away and shut her door and Yusipovich did not let her. 4RP 186-187. He prevented her from closing her door and physically grabbed her out of the car. 4RP 186. Yusipovich then cornered her and pinned her to the car so she could not move. 4RP 82-83. He then placed his hands on her face to prevent her from moving just prior to kissing and licking her face and chest area. 4RP 186-187. His physical force used in this incident caused a baseball size bruise to K.F.'s hip and swelling to her tooth. 4RP 103-104.

In the absence of any evidence establishing that no unwanted physical contact occurred before or during the sexual contact, Yusipovich is unable to cast doubt on the jury's verdict. The State's evidence demonstrated that Yusipovich used physical force that overcame resistance, and the jury could have reasonably inferred that physical force was displayed by Yusipovich just before or during the sexual contact.

**D. CONCLUSION**

The State's evidence sufficiently established Yusipovich's guilt for Indecent Liberties.

DATED this 19<sup>th</sup> day of March, 2010.

RESPECTFULLY submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jennifer M. Winkler, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. OLEKSANDIR YUSIPOVICH, Cause No. 62896-8-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Betty H. Huddleston  
Name  
Done in Seattle, Washington

3/19/10  
Date

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STATE OF WASHINGTON