

W5045-9

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NO. 65045-9-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,
Respondent,
v.
LIBAN WARSAME,
Appellant.

FILED
2010 SEP 24 AM 10:54
CLERK OF COURT
SUPERIOR COURT
KING COUNTY

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE MICHAEL TRICKEY

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

HUGO TORRES
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

ORIGINAL

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A. ISSUE PRESENTED

Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. To interfere with the reporting of domestic violence, a defendant must have prevented a victim or witness from calling a 911 emergency communication system, or obtaining medical assistance, or making a report to any law enforcement officer. Here, Warsame assaulted victim Dolan, who then sought to call 911. She was unable to make the call herself due to being assaulted, and instructed her daughter to make the call. Warsame then grabbed the phone and threw it across the room, attempting to break it. Dolan's daughter repaired the phone, called 911, and spoke with the operator before handing the phone to Dolan. Police arrived and Dolan made a report. Is there substantial evidence in the record to support Warsame's conviction?

B. STATEMENT OF FACTS

1. PROCEDURAL FACTS.

Liban Warsame was charged with one count of Assault in the Fourth Degree - Domestic Violence and one count of Interfering With the Reporting of Domestic Violence after police responded to a 911 call reporting that Warsame had assaulted his mother. CP 1-2. Warsame was convicted as charged after a bench trial. CP 5-11. The court sentenced Warsame to Local Sanctions. Id. Warsame then brought this appeal, seeking review. CP 12-13.

2. SUBSTANTIVE FACTS.

In the early morning of January 11, 2010, Liban Warsame, the appellant, came to Amran Dolal's house (Dolal is his mother) in hopes of taking a shower. CP 15-18. On January 11, 2010, Amran Dolal was 35, and 7-months pregnant. Id. Her pregnancy was obvious, as her stomach visibly protruded from her body. Id. Ms. Dolal was missing several items that she believed the respondent had taken, and did not want to let the respondent into the house. Id.

An agreement was reached between the respondent and Ms. Dolal: if the respondent gave his shoes to his mother to hold, she would allow him inside the house to take a shower. Id. After the respondent showered, the respondent came downstairs and a confrontation occurred, as the respondent demanded the return of his shoes, however his mother did not want to return them until he returned the items she believed he had taken. Id. In response, the respondent intentionally pushed his mother to the ground and punched her with a closed fist in her forehead. Id.

Ms. Dolal was scared and felt pain when she was punched in the forehead. Id. She suffered a bruise on her forehead as a direct result of being punched. Id. During the assault, Ms. Dolal tried to have 911 called by instructing her daughter, Najama Ahmed, to place the call. Id. However, the respondent grabbed the phone away and threw the phone against the wall - breaking it - in order to prevent the police from being called. Id.

Najma Ahmed tried to assist her mother, but was prevented when she was thrown to the ground by the respondent. Id. However, Najma Ahmed then went to another room and was able to piece the phone back together and call 911. Id. After 911 was called, the respondent left the house. Id. Officer Laura Givens of

the Seattle Police Department responded to the 911 call and observed swelling and redness on Ms. Dolal's forehead. Id.

C. ARGUMENT

1. THE COURT'S FINDING OF FACT THAT WARSAME INTERFERED WITH HIS MOTHER'S CALLING OF 911 IS SUPPORTED BY SUBSTANTIAL EVIDENCE, AS DOLAL WAS CLEARLY TRYING TO CALL 911.

Findings of fact in a juvenile matter are reviewed for substantial evidence. State v. B.J.S., 140 Wn. App. 91, 97, 169 P.3d 34 (2007); State v. Alvarez, 105 Wn. App. 215, 220, 19 P.3d 485 (2001). "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding." State v. Levy, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006) (citations omitted). Findings of fact must support conclusions of law. B.J.S., 140 Wn. App. at 97, 169 P.3d 34. Unchallenged findings of fact are verities on appeal. Levy, 156 Wn.2d at 733, 132 P.3d 1076. Findings of fact erroneously labeled conclusions of law are reviewed as findings of fact, and conclusions of law labeled findings of fact are reviewed as conclusions of law. Willener v. Sweeting, 107 Wn.2d 388, 394, 730 P.2d 45 (1986).

Defense had an opportunity after trial to review and propose changes to the Findings of Fact. Indeed, defense made use of this opportunity when it objected to Findings 4 and 7. The court agreed to strike Finding 4 but upheld Finding 7. Defense did not object to Finding 11, that Ms. Dolal "tried to call 911" nor to the Conclusions of Law. Again, unchallenged findings of fact are verities on appeal, meaning that the court's interpretation of Dolal's asking her daughter to call 911 as constituting an attempt by Dolal to call 911 must stand, as it is clearly sufficient to persuade a fair-minded, rational person of the truth of the finding. Moreover, though these Findings were reviewed post-trial, the general rule that the absence of an objection by defense counsel "strongly suggests to a court that the argument or event in question did not appear critically prejudicial to an appellant in the context of the trial" should apply here. State v. Swan, 114 Wn.2d 613, 661, 790 P.2d 610 (1990), cert. denied, 498 U.S. 1046 (1991).

2. THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT WARSAME'S CONVICTION FOR INTERFERING WITH DOMESTIC VIOLENCE REPORTING.

Warsame asserts that the State did not prove that he interfered with domestic violence reporting because the evidence at trial indicated that the victim's daughter, Najma Ahmed, was the one who physically picked up the phone and tried to place a phone call to 911. This argument should be rejected because there was sufficient evidence from which a rational trier of fact could find that Warsame had interfered with an attempt to call 911 by the victim, Amran Dolan. It was Dolan who wanted 911 to be contacted, who asked her daughter to call 911 as she was being assaulted by the defendant, and who eventually ended up speaking on the phone with the 911 operator.

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

"A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that reasonably can be drawn therefrom." Id. at 201. Circumstantial and direct evidence are equally reliable. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. Id. at 719. The reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. Id. at 718.

A person commits the crime of interfering with the reporting of domestic violence if the person: (a) Commits a crime of domestic violence, as defined in RCW 10.99.020; and (b) Prevents or attempts to prevent the victim of or a witness to that domestic violence crime from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official. RCW 9A.36.150. Defendant seeks to overturn his conviction for this charge by alleging that Dolal was not the one trying to call 911. Defendant argues that because it was Dolal's daughter, Najma, who physically dialed the phone, Najma is the only one whose attempt to report domestic violence was

interfered with. This interpretation relies on viewing all inferences in favor of defense and is not supported by the evidence. Indeed, Defendant clearly acknowledges in his brief that Dolal was the one who was seeking to have 911 called, and Najma acted only at Dolal's prompting. Defendant cites the following testimony from Dolal:

I told my daughter which is nine year old, call 911. And by the time she try and call 911, he run to the kids. The kids try and help me, then he run to me, (INAUDIBLE). And then my daughter, she grabbed the phone, he run to my daughter and tore the phone out of the wall and the battery come out and she put it together and later on she called 911.

RP 26; see also RP 30 ("(L.W.) grab the phone from the kids. . ."); RP 46-47 ("And I called my oldest (daughter), Najma, Najma, call 911" and "(w)hen he run to her, she try and run away and he grab her and push down and grab the phone. . .").

Appellant's Opening Brief at pg. 3.

Notably, defendant cannot point to any aspect of the criminal statute to establish that it only criminalizes interference with the physical dialing of a telephone to call 911. The crime, rather, is "[p]revents or attempts to prevent the victim...or a witness...from calling a 911 emergency communication system..." Among the definitions for "call" in the Merriam-Webster Dictionary is the following: "to get or try to get into communication by telephone."

Merriam-Webster Dictionary Online, <http://www.merriam-webster.com/dictionary/call?show=0&t=1285000994>. Here, there is clear evidence of domestic violence against Dolal, during which time she tried "to get into communication by telephone" with 911. She did this by instructing her daughter to place the call. Then, Warsame interfered with Dolal's ability to communicate with 911 by throwing the phone, an act that clearly was intended to and accomplished interference with a domestic violence call.

Though an inexact comparison, the law on accomplice liability is instructive here. In regards to criminal conduct, a person is an accomplice if one "(i) solicits, commands, encourages, or requests such other person to commit it; or (ii) aids or agrees to aid such other person in planning or committing it..." RCW 9A.08.020. Here, there was clearly no criminal conduct by Dolal or Najma, but it is also clear that they were working in concert to call 911. Dolal requested that Najma place the call, and Najma agreed to aid Dolal in making the call. Dolal and Najma jointly tried "to get into communication by telephone" with 911. Warsame then interfered with their attempt to call 911.

During the trial, the defense attorney elicited testimony from Dolal wherein she acknowledged that she had called 911 to report the defendant's behavior on previous occasions:

Q. You have called 911 before?

A. We call when he attack me that time because he was 16 and I told myself since he was young to give it time.

RP 42.

Thus, Defendant clearly had reason to believe that Dolal was trying to communicate with 911, as she had done so on a previous occasion. Indeed, Dolal's desire to call and therefore communicate with 911 is made explicitly clear in this case, as she not only instructs her daughter to place the call but actually ends up talking to the 911 operator once her daughter repairs the phone and initiates the call. RP 67-68.

Thus, the evidence clearly indicates Dolal sought to call 911 but could not do so directly, because the defendant was assaulting her. Ms. Dolal therefore tried to call 911 by instructing her daughter to place the call. Warsame, knowing his mother has called 911 in the past, interfered with Dolal's and Najma's attempt to call 911 by ripping the phone out before Najma could place the call on Dolal's

behalf. In ripping out the phone, Warsame prevented both Dolal and Najma from calling 911. Thus, he interfered with Dolal's ability to call 911 *and* Najma's ability to call 911 to report domestic violence. Defense is therefore correct that Najma could *also* be listed as the victim of the crime of interfering with a domestic violence report, but the evidence clearly provides a basis to support Dolal as the victim as well--it was Dolal who wanted to call 911 and Najma who aided her by attempting to carry out the physical dialing of 911. Warsame's challenge to the sufficiency of the evidence therefore fails because it rests on evidence viewed in the light most favorable to the *defense*, that Dolal's words and instructions and actual communication somehow did not constitute an attempt to have 911 called.

The sufficiency of the evidence is further supported by the court's Findings of Fact, signed to and agreed by the State and by the defendant, wherein the court found that Warsame tried to interfere with Dolal's "call[ing] 911..." There was no objection to this finding after the trial. Unchallenged findings of fact are verities on appeal. Levy, 156 Wn.2d at 733, 132 P.3d 1076. This finding clearly establishes that in throwing the phone, Warsame interfered

with Dolal's ability to call 911. As a reasonable and valid interpretation of the evidence, it is a legitimate finding and therefore is a verity in this appeal. This leaves little doubt as to the sufficiency of the evidence.

Because the evidence established that Warsame assaulted his mother, that his mother then tried to call 911 by instructing her daughter to place the call, and that Warsame interfered with the attempted call by throwing the phone across the room, a rational trier of fact could, and did, find that Warsame attempted to prevent the victim of a domestic violence crime from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official.

3. IN THE ALTERNATIVE, THE CONVICTION SHOULD STAND AS WARSAME CLEARLY INTERFERED WITH DOLAN'S ABILITY TO OBTAIN MEDICAL ATTENTION AND TO MAKE A REPORT TO LAW ENFORCEMENT.

Defense acknowledges that the crime at issue can be committed by several alternative means, noting that each type of prevented communication is a distinct means of committing the offense (preventing a 911 call, preventing medical assistance, or

preventing a report). State v. Nonog, 145 Wn. App. 802, 812-813, 187 P.3d 335 (2008), aff'd, 169 Wn.2d 220, 237 P.3d 250 (2010). However, unlike in Nonog, which was a jury trial and where the prosecutor only argued one means, and the evidence only supported one means, here the evidence presented by the State supported each of the alternative grounds.

First, evidence was presented that Dolal wanted to call 911, supporting the first means, as detailed in the arguments above.

Evidence was also introduced that Dolal was pregnant and felt pain upon the assault, and may have sought medical attention, supporting the second means. Dolal stated that she felt pain at being dragged by Warsame, and that her finger was hurt from being tied in a shoelace. RP 25-26. Dolal then stated "I'm telling him [Warsame] my finger, my finger, I'm crying, and I get hurt. I told my daughter, which is nine year old, call 911." RP 26. Thus, it is clear that part of what prompted her to have 911 called was the pain she was feeling, making it a reasonable inference that she was seeking to have medical treatment. This was further reinforced when Dolal stated that "...his [Warsame's] knees was kicking my stomach and my stomach is hurting and I called 9-- I mean, I went to the hospital." RP 26-27. Thus, Dolal conflates calling 911 with

the possibility of going to the hospital, and Warsame's taking the telephone clearly interfered with the ability to seek medical attention by Dolal.

Finally, the evidence clearly indicated that Dolal spoke with the police and made a report, supporting the third means. RP 87 (Officer testifies that she spoke with Dolal and took her statement). Indeed, in his oral ruling, Judge Trickey found the "testimony that (L.W.) took the phone and smashed it credible and the intent clearly was to prevent communication with law enforcement." RP 155.

Thus, even if this Court finds that Dolal did not try to call 911, the evidence presented and the oral findings in the record support a conviction on the second and third alternative means as well, as the defendant clearly attempted to prevent Dolal from making a report to law enforcement when he grabbed the phone. This also had the effect of preventing any attempt by Dolal to seek medical attention, even as she was articulating the pain she was feeling from the defendant's actions. Evidence was therefore presented supporting all three alternative grounds present in the statute, and the court chose to find Warsame guilty on the first ground. As the evidence presented indicates, however, it could have found Warsame guilty on any of the three grounds.

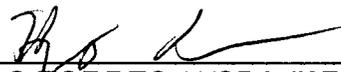
D. CONCLUSION

For the above reasons, the State respectfully requests that this Court affirm Warsame's conviction.

DATED this 23 day of September, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
HUGO TORRES, WSBA #37619
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002