

65045-9

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NO. 65045-9-I

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

REC'D
JUL 29 2010
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

L.W.,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY, JUVENILE
DIVISION

The Honorable Michael J. Trickey, Judge

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The evidence is insufficient to support appellant's conviction for Interfering with Domestic Violence Reporting.

Issues Pertaining to Assignments of Error

1. There are several alternative means by which a defendant can commit the crime of Interfering with Domestic Violence Reporting. In appellant's case, the State alleged that he committed the crime by preventing the victim of an assault (his mother) from calling 911. The trial evidence, however, demonstrated that appellant prevented a witness to that assault (his sister) from calling 911. Must appellant's conviction be reversed for insufficient evidence?

2. The trial court erred when it entered finding of fact 11, which states, "During the assault, when Ms. Dolal tried to call 911, the respondent grabbed the phone away and threw the phone against the wall – breaking it – in order to prevent the police from being called."¹

3. The trial court erred when entered conclusion of law II(3), which states, "That the respondent prevented or attempted to

¹ The trial court's written findings and conclusions are attached to this brief as an appendix.

prevent Amran Dolal from calling a 911 emergency communication system or obtaining medical assistance or making a report to any law enforcement officer.”

B. STATEMENT OF THE CASE

The King County Prosecutor’s Office charged juvenile L.W. with (count 1) Assault in the Fourth Degree – Domestic Violence and (count 2) Interfering with Domestic Violence Reporting. CP 1-2. At a bench trial, the Honorable Michael Trickey found L.W. guilty of both offenses and imposed local sanctions. CP 5-11. L.W. timely filed his Notice of Appeal. CP 12-13.

With one notable exception, discussed below, Judge Trickey’s written findings and conclusions accurately summarize his findings in the case and the trial evidence.

On the morning of January 11, 2010, L.W. came home intending to shower. CP 15. L.W.’s mother, Amran Dolal, believed that L.W. previously had removed items from the house and she did not allow L.W. inside. CP 16. The two reached an agreement, however, where L.W. gave his shoes to his mother to hold as collateral while he took a shower. CP 16.

When L.W. finished showering, he asked for his shoes back. His mother refused and said she would not give them to him until

he returned the missing property she believed he had taken. CP 16. L.W. assaulted his mother by pushing her to the ground and hitting her.² CP 16.

Dolal testified that after she had been pushed the ground, her daughter tried to call 911:

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”).

L.W.’s sister, Najma Ahmed, described the same event. She testified that she witnessed L.W. assault their mother. RP 63.

And then my mom told me to call 911 and then he dropped the phone and throwed it. And I went to the laundry, that’s where he throwed it, and actually like when he throwed it he got my head and kind of like pushed it like he pushed me in the ground and then I went to the laundry crawling and I put the phone together.

² L.W. denied the assault, but Judge Trickey rejected his version of events as not credible. RP 111-115, 154; CP 16.

RP 64.

During closing argument, the deputy prosecutor recognized that it was Najma who tried to call 911 but was prevented from doing so by L.W. See RP 141 (referring to children trying to call 911 and Najma retrieving the phone pieces); RP 144-145 (referencing kids' attempt to call 911).

In his oral ruling, Judge Trickey merely 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. He did not identify who was prevented from making the call. In the written findings drafted by the prosecutor, however, Judge Trickey found that "Ms. Dolal tried to call 911." CP 16.

L.W. now appeals.

C. ARGUMENT

THE EVIDENCE IS INSUFFICIENT TO SUPPORT L.W.'S
CONVICTION ON COUNT 2.

L.W. was charged in count 2 with Interfering with the

Reporting of Domestic Violence:

(1) 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(1)(a)-(b).

This crime can be committed by several alternative means. For example, 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, ___ Wn.2d ___, 2010 WL 2853913 (July 22, 2010). The classification of the individual prevented from reporting domestic violence also provides alternative means. The crime can be committed against either “the victim of or a witness to” the domestic violence. See RCW 9A.36.150(1)(b) (emphasis added).

The federal and state constitutions demand that a defendant only be tried and convicted on the charge found in the indictment or information. State v. Frazier, 76 Wn.2d 373, 376, 456 P.2d 352 (1969); U.S. Const., amend. 6; Const. art. 1, § 22.³ A defendant cannot be convicted of an uncharged offense. State v. Schaffer, 120

³ Art. 1, § 22 provides, "In criminal prosecutions, the accused shall have the right . . . to demand the nature and cause of the accusation against him"

Wn.2d 616, 619-20, 845 P.2d 281 (1993); State v. Valladares, 99 Wn.2d 663, 671, 664 P.2d 508 (1983); State v. Rhinehart, 92 Wn.2d 923, 928, 602 P.2d 1188 (1979).

This rule applies to alternative means of committing an offense. Where the information charges only one means, the defendant may not be convicted for “other ways or means by which the crime could have been committed, regardless of the range of evidence admitted at trial.” State v. Bray, 52 Wn. App. 30, 34, 756 P.2d 1332 (1988) (citing State v. Severns, 13 Wn.2d 542, 548, 125 P.2d 659 (1942)). Because this claim involves a manifest constitutional error, it may be raised for the first time on appeal. See State v. Garcia, 65 Wn. App. 681, 686 n.3, 829 P.2d 241, review denied, 120 Wn.2d 1003 (1992).

L.W. was charged solely with interfering with a victim’s reporting of the crime. See CP 2 (“having committed a crime of domestic violence . . . did intentionally prevent or attempt to prevent Amran Dola, the victim of that crime, from calling a 911 emergency communication center[.]”). While the State could have charged that L.W. interfered with a witness reporting domestic violence (Najma), it chose not to do so. Therefore, L.W. could only be convicted of interfering with his mother’s attempt to place a call. The evidence

does not support this.

In all criminal prosecutions, due process requires that the State prove every fact necessary to constitute the charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970). Where a defendant challenges the sufficiency of the evidence, the proper inquiry is, when viewing the evidence in the light most favorable to the prosecution, whether there was sufficient evidence for a rational trier of fact to find guilt beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979); State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980).

The evidence at trial revealed that Najma, and only Najma, actually attempted to place a 911 call and had her efforts thwarted by L.W. Because there was no evidence presented at trial that L.W. prevented his mother from calling 911, written finding of fact 11 (and the conclusion of law upon which it is based) is erroneous. See, e.g., Bering v. Share, 106 Wn.2d 212, 220, 721 P.2d 918 (1986) (findings not supported by substantial evidence are erroneous). Without that erroneous finding, L.W. could not be convicted on count 2 because the State only charged him with interference under the “victim means” of committing the offense.

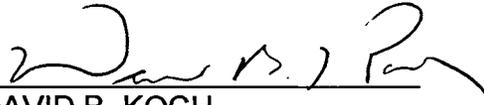
D. CONCLUSION

This Court should reverse and vacate L.W.'s conviction on count 2.

DATED this 29th day of July, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A handwritten signature in black ink, appearing to read "David B. Koch", written over a horizontal line.

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APPENDIX

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY
JUVENILE DIVISION

STATE OF WASHINGTON,

Plaintiff,

vs

LIBAN WARSAME
DOB 8/20/92

Respondent

No 108001478

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
PURSUANT TO JuCR 7 11(d)

THE ABOVE-ENTITLED CAUSE having come on for trial on 2/22/10, before the undersigned judge in the above-entitled court, the State of Washington having been represented by Hugo Torres and Erinn Bennett, the respondent appearing in person and having been represented by his attorney, Brian Beattie, the court having heard sworn testimony and arguments of counsel, and having received exhibits, now makes and enters the following findings of fact and conclusions of law

FINDINGS OF FACT

I

- 1 In the early morning of January 11, 2010, Liban Warsame, the respondent, came to his mother's house in hopes of taking a shower
- 2 Amran Dolal is the respondent's mother
- 3 On January 11, 2010, Amran Dolal was 35, and 7-months pregnant Her pregnancy was obvious, as her stomach visibly protruded from her body
- 4 ~~The respondent is healthy and physically larger than his mother~~ MIT

FINDINGS OF FACT AND CONCLUSIONS OF LAW
PURSUANT TO JuCR 7 11(d) - 1

ORIGINAL

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- 1 5 Ms Dolal was missing several items that she believed the respondent had taken, and did not want to let the respondent into the house
- 2 6 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 It is unclear whether the respondent admitted to taking the missing items, or whether he promised to return the missing items after his shower
- 3
- 4 7 The respondent was angry even before he came into the house
- 5 8 After the respondent showered, the respondent came downstairs and a confrontation occurred
- 6 9 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 In response, the respondent intentionally pushed his mother to the ground and punched her with a closed fist in her forehead
- 7
- 8 10 Ms Dolal was scared and felt pain when she was punched in the forehead She suffered a bruise on her forehead as a direct result of being punched An ordinary person who is not unduly sensitive would have found Mr Warsame's actions harmful and offensive
- 9 11 During the assault, when Ms Dolal tried to call 911, the respondent grabbed the phone away and threw the phone against the wall - breaking it - in order to prevent the police from being called
- 10
- 11 12 Ms Dolal's daughter, Najma Ahmed, tried to assist her mother, but was prevented when she was thrown to the ground by the respondent However, Najma Ahmed went to another room and was able to piece the phone back together and call 911
- 12 13 After 911 was called, the respondent left the house
- 13 14 Officer Laura Givens of the Seattle Police Department responded to the 911 call and observed swelling and redness on Ms Dolal's forehead
- 14 15 Officer Givens' testimony was credible
- 15 16 Amran Dolal's testimony was credible
- 16 17 Najma Ahmed was competent to testify Najma Ahmed's testimony was credible Further, it is inconceivable that Ms Dolal could have convinced her to lie because there was no time between when 911 was called and when the police arrived for a story to be created
- 17 18 It is unclear whether Ms Dolal pushed the respondent during the assault, but even if she did, it would still not be a legal basis to punch her in order to retrieve a pair of shoes
- 18 19 The respondent's punching his mother in the forehead was an excessive use of force His actions were not justified, nor were they a lawful use of force to protect himself or his property The respondent did not act in self-defense
- 19 20 Liban Warsame's testimony was not credible
- 20 21 These events took place in King County, Washington

And having made those Findings of Fact, the Court also now enters the following

CONCLUSIONS OF LAW

I

1 The above-entitled court has jurisdiction of the subject matter and over the respondent,
2 Liban Warsame, who was born 8/20/1992, in the above-entitled cause

II

3 The State has proven the following elements of Assault in the Fourth Degree – Domestic
4 Violence, contrary to RCW 9A 36 041, beyond a reasonable doubt

- 5 1 That on or about January 11, 2010, the respondent Liban Warsame did intentionally
- 6 2 That the acts occurred in King County, Washington

7 The State has also proven the following elements of Interfering with the Reporting of
8 Domestic Violence, contrary to RCW 9A 36 150, beyond a reasonable doubt

- 9 1 That on or about January 11, 2010, the respondent did intentionally commit the crime of
- 10 2 That on that date the respondent was a family or household member of Amran Dolal
- 11 3 That the respondent prevented or attempted to prevent Amran Dolal from calling a 911
- 12 4 That the acts occurred in King County, Washington

III

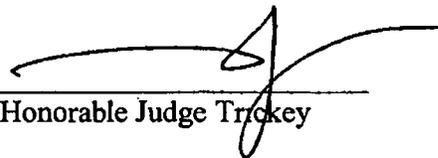
13 The respondent is guilty of the crime of Assault in the Fourth Degree – Domestic
14 Violence

15 The respondent is guilty of the crime of Interfering with the Reporting of Domestic
16 Violence

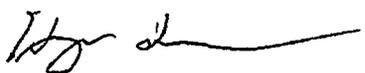
IV

17 Judgment should be entered in accordance with Conclusion of Law III In addition to
18 these written findings, the Court incorporates all of its oral findings and conclusions as reflected
19 in the record

20 SIGNED this 26th day of March, 2010

21 
Honorable Judge Trokey

22 Presented by



1 Hugo Torres, #37619
Deputy Prosecuting Attorney

2

3 Erinn Bennett, #41233
Deputy Prosecuting Attorney

4



5 Brian Beattie 35753
Attorney for Respondent

6 *Approved as to form only*

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