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Court of Appeals
Division I
State of Washington

NO. 72133-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MOWLID MOHAMED,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CHAD ALLRED

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Challenges to the sufficiency of the evidence involve the evaluation of all facts and circumstances, accepted as true, and viewed in the light most favorable to the State to determine whether a rational fact-finder could find beyond a reasonable doubt the elements at issue. When the appellant is identified by the victim as the person who dropped the leash of a large and well-muscled “pit bull” breed dog and ordered the dog to “get” the victim, and is found nearby by police, still in possession of the dog, first denies any incident before equivocating and claiming the victim was “talking shit,” does sufficient evidence support his conviction for assault in the second degree?

B. STATEMENT OF FACTS

Ali Yusuf Ali was at a coffee shop/cafeteria located in the city of SeaTac on the night of March 24, 2014. RP 106. He was in SeaTac that day to visit and see some friends. RP 106. Ali had been to the coffee shop/cafeteria before, he visited with friends there, and on this day he had been there for hours. RP 106, 199. He was fifty years old at the time of trial, he was born in Somalia, and Somali is his first language. RP 104. Ali did not know the exact time the coffee shop/cafeteria closes, but he knew that it was open until eleven. RP 106. On that night, just before it

was closing, Ali was standing outside of the coffee shop/cafeteria along with many other people. RP 106-07. As he stood outside in the parking lot, Ali was approached by two men; one, he identified as Mowlid Mohamed, and the other one he had not seen before that night.

RP 109-11. Ali described the other man as appearing to him to be Asian.

RP 111. The other man was later identified as Tyler Webster. RP 133-35.

Ali had seen Mohamed at the coffee shop/cafeteria before. RP 111, 192, 193. Ali identified Mohamed as being Somali. RP 111.

Ali had never had any disagreement or exchange of words with Mohamed or Webster before that night. RP 113, 192. Ali did not pay much attention to Mohamed, the dog, nor Webster as they approached. RP 186. Ali moved as Mohamed, the dog, and Webster got closer to him, and after he moved, the three again got closer. RP 186. Ali had seen Mohamed with a dog before, and on that night, he could see that Mohamed had a dog with him. RP 112. Mohamed was holding the dog's leash as they approached, and when he and the dog were about ten feet away from Ali, Mohamed let go of the dog's leash and said "get him, get him." RP 112-13. When Mohamed let go of the leash and said "get him, get him," the dog attacked Ali by jumping on him and repeatedly biting his arm. RP 114, 186-87. Ali fell to the ground when the dog jumped on

him, and the dog remained on top of him, biting him, as he was on the ground. RP 186-87.

Mohamed stood there as the dog was biting Ali. RP 187.

Mohamed did not try to pull the dog off of Ali, though other people intervened and did so. RP 188. Ali did not hear Mohamed say anything else once the dog was biting him. RP 188. Once the other people who intervened had pulled the dog off of Ali, Mohamed immediately grabbed the dog's leash and walked away. RP 188.

Ali was wearing a jacket that night; the dog's bite went through the jacket and caused wounds that required stitches. RP 188-89, 190. Ali's hand was still swollen at the time of trial, he sometimes has no feeling in his arm in the area where the dog bit him, and he still has visible scars from the attack. RP 190-91. Three photographs of Ali's injured arm were identified by King County Sheriff's Deputy Jose Bartolo and Ali and admitted at trial. RP 128-29, 190; Ex. 1, 2, 3).

Ali called the police after Mohamed and the dog walked away; police immediately arrived. RP 188. King County Sheriff's Deputies Jose Bartolo, Mark Lohse-Miranda, and Michael Yamamoto were dispatched to the call. RP 121, 123, 133, 144.

In responding to the 911 call, Deputy Bartolo contacted Ali, who was holding his left arm, which was bleeding and had a puncture wound.

RP 121, 122. Deputy Bartolo later went to Highline Hospital in Burien, where Ali was taken for treatment of his injuries, and noted that Ali had six puncture wounds on his arm, with flesh visible through the wounds. RP 126-28. Deputy Bartolo photographed the wounds; the photographs were admitted and published to the jury. RP 128-29. Deputy Bartolo also took a statement from Ali at the hospital that night. RP 129.

In his response to the 911 call, Deputy Lohse-Miranda first went to the scene of the attack, got the description of the suspects, then drove around the area looking for them. RP 133. Deputy Lohse-Miranda located, approximately one block south of the location, two suspects matching the description, walking with a dog; the suspects were identified as Mohamed and Webster. RP 133-35. Webster was holding the dog's leash when Deputy Lohse-Miranda contacted them. RP 135. Deputy Lohse-Miranda asked what had happened in the parking lot, and Mohamed said nothing had happened, took the leash from Webster, and claimed ownership of the dog. RP 135-36.

Deputy Lohse-Miranda responded that he knew something had happened, and was met with denials before Mohamed said, in a direct quote documented by Deputy Lohse-Miranda, "well, that guy was talking shit." RP 136-37. Deputy Lohse-Miranda, Mohamed, Webster, and the dog were joined by Deputy Yamamoto. Mohamed was placed under

arrest. RP 139. For a time during the contact, the dog's leash was tied to the front bumper of Deputy Lohse-Miranda's patrol car, and after someone else transported Mohamed to the jail, the dog was put into the back of Deputy Lohse-Miranda's patrol car. RP 140. Deputy Lohse-Miranda remained at the scene with the dog waiting for animal control for more than half an hour, and during the entire contact, personally observed no aggression and no resistance from the dog. RP 140-41.

In his response to the 911 call, Deputy Yamamoto came to where Deputy Bartolo was with Ali before going to assist Deputy Lohse-Miranda who was with Mohamed, Webster, and the dog. RP 144-45. Deputy Yamamoto transported Mohamed to jail after he was arrested. RP 145. Deputy Yamamoto did not question Mohamed as they drove, but Mohamed asked what was going to happen to his dog, whom he called Snoopy, and said that Snoopy was about six months old. RP 145-46.

King County Animal Control Officer Thomas Harris, drawing on his thirty-six years as an animal control officer, also testified. RP 147. In his years as an animal control officer, Officer Harris has been exposed to the vast majority of recognized or mixed breeds of all domestic dogs; his work involves investigating animal neglect, stray animals, and attacks by animals on people. RP 147. In his work, Officer Harris has contacted

animals who are displaying aggression on a daily basis. Officer Harris estimated that through his work, the number of dogs that he has come into contact with is well into the thousands. RP 148-49.

On the night of March 24, 2014, Officer Harris was on call with an animal control truck at his home to respond to after-hour emergencies as needed. RP 149. He received a request, at approximately 11:15 or 11:30 in the evening, from a police agency to impound a dog that they had in their possession, which was a high priority call, as it involved police and a reported bite with injuries to a human. RP 150. Officer Harris recalled arriving at the location where the police officer had the dog between midnight and fifteen minutes after. RP 150. Upon arrival, Officer Harris was able to see the dog in the back seat of the patrol car; he described the dog's demeanor as "calm...very relaxed, alert, attentive, but [was] not protective of the car as they sometimes—if they are inside, will take that as their own and bark or do a display." RP 151. Officer Harris described the dog as "very affable," and stated that from his observations, the dog seemed to be well-socialized and well-trained. RP 151, 174. Officer Harris took custody of and led the dog from the patrol car using a soft leash, as he had no fear that the dog would be aggressive or try to bolt and escape. RP 152.

Officer Harris took the dog, a male, to the central animal control shelter in the city of Kent. RP 153-54. When a bite is involved, a quarantine needs to be observed, and there was a police evidence hold on the dog. RP 153. During his contact with the dog, Officer Harris made a number of observations of the dog, noting, “[T]he musculature was very, very well musculature, fine definition, a healthy animal here...and with this dog, I was struck by how—how healthy and large for his breed. It was on the upper end of the sizes.” RP 156. Officer Harris identified the breed of the dog as the generic pit bull. RP 157.

In his training and experience as an animal control officer, Officer Harris is familiar with different bite types; in his training and experience, different breeds of dogs possess differing levels of jaw strength. RP 161. On the spectrum of strength of bite, a pit bull is in the top three most powerful jaw and bite strengths. RP 161-62. Different dogs have different bites. RP 162. Officer Harris testified about the practice of bull baiting, which is where this particular breed style was sent up against a full-sized bull, and described the bite style of a pit bull, saying “this type of dog bites and holds on and won’t...[T]hey’re trying to...get the prey or the other animal down.” RP 163.

Officer Harris testified that non-verbal communications are key in communicating with dogs. RP 163-64, 167-68. Officer Harris testified

that a key thing for dogs is deferring to the alpha of the pack, and the age and personality of a dog are facets involved in the decision of a dog as to what to do if somebody acted aggressively toward its handler. RP 170. Officer Harris testified that this dog, at about six months old, would behave more what he described as “adolescent running behind mom than jump into the fray...more puppy,” and that at six months, there is an expectation of a general behavior that you can count on. RP 171-73.

Officer Harris testified that this dog did not display a sense of protection like it would protect people, and he did not behave aggressively in Officer Harris’ presence at all. RP 173. Officer Harris, who has been bitten before and would use a catch pole in handling a dog if he felt there was a need for it, did not use it with this dog. RP 173-74. Officer Harris testified that from what he observed with this dog, though it is possible that this dog could act aggressively if it had a perception that its handler was being threatened, the dog was very appropriate temperament wise and showed no sign of aggression. RP 174. Officer Harris testified on redirect that if a dog recognizes someone as his master, that dog will lock in on and follow commands that he gets from that person. RP 175.

Part of the process when an animal is quarantined at animal control, it is watched for symptoms of rabies, which never appeared with this dog. RP 158. Though the dog was originally noted by him to be

dangerous per protocol, as there was a dog bite and resulting medical treatment involved, Officer Harris was aware that there was no further aggression displayed by the dog toward anyone. RP 158-59. The dog was released to the registered owner prior to the completion of the ten-day quarantine, as it is legal for a dog to be quarantined at home. RP 159. Officer Harris listed the largest factor considered by his agency in deciding whether to release a dog under quarantine as public safety. RP 160. The existence of any prior violations, which could range from a dog running at large without a leash up to dogs attacking livestock, plays a role in the decision of whether or not to release a dog to its owner. RP 160-61.

Mohamed also testified, and said that he was at the Somali coffee shop late in the evening of March 24, 2014, that he remembered this incident, that he had gotten the dog from someone that he met up with, intended to keep the dog, and had had him for two days at the time of the incident. RP 207-08. Mohamed called the dog Snoopy, and had not had any problems with him before that evening. RP 208-09. Mohamed testified that he and the dog, who was on a leash, were across the street from the coffee shop and a restaurant, separate business where most of the customers are Somali. RP 209. Mohamed testified that he did not know

Webster very well, and was just walking around with him that day.

RP 212.

Mohamed testified that before he saw Ali, there were “not a lot of people there. Let’s say more than 20 people.” RP 210-11. Mohamed testified that he was talking to a bunch of people generally at the coffee shop/restaurant when Ali came to him and asked him why he had a dog. RP 212-13. Mohamed responded to Ali “that’s not your business.”

RP 213. Mohamed testified that Ali said “you know you’re not supposed to have no dogs,” and he replied to Ali again that it’s none of Ali’s business. RP 213. Mohamed testified that Ali said “you think this dog is not going to kill somebody,” to which Mohamed replied “hey, I don’t know.” RP 213. Mohamed testified that Ali then said “I’m going to break his neck, because you’re not supposed to have the dog,” and Ali had come by and hit the dog.

Mohamed was asked if he was telling defense counsel that Ali said the dog was going to hurt someone else, and he responded no, Ali was saying that as a Muslim people, they were not supposed to have dogs. RP 214. Mohamed testified that Ali then hit the dog, and Mohamed pushed the dog to the side, told Ali to leave him alone, and Ali left, but he just kept “talking shit.” RP 214. Mohamed testified that he started talking to other people, that the leash of the neck was large, and it was loose so

the leash got off, and the dog approached Ali. RP 215. Mohamed described the incident itself as follows: I just realized later on when Ali fell down and I heard about a voice. So I run to the dog, and I just pull off the dog. And I—I go.” RP 215.

Mohamed was asked what he said when the dog broke loose from him, and he testified that he didn't even know when the dog was gone or not. RP 215. Mohamed denied that he or anyone else ever said “get him.” RP 216. Mohamed testified that Ali was laying down and crying, but he thought Ali was joking or something, and he, Webster, and the dog walked away. RP 216-17. Mohamed testified that if he was aware that his dog had done something wrong, he would run away, but he didn't run away here, because he didn't know that Ali was hurt. RP 217.

Mohamed testified that as they walked away, no one told him to stop and he estimated more than 20 people were standing around in the parking lot at that point. RP 218. Mohamed denied telling police that Ali was “talking shit,” and testified that he told police what had happened, exactly as he was testifying. RP 218.

On cross-examination, Mohamed testified that he and Ali were not actually in the parking lot in front of the coffee shop and cafeteria, but were across the street. RP 220-21. Mohamed identified the dog as “[m]y innocent dog. I love it. I mean it wasn't my dog, but I...” RP 222. He

testified that the man who gave the dog to him did so on the street, did not give him any sort of papers for the dog, did not tell him it was micro-chipped, and Mohamed did not give the man any money for the dog. RP 222.

On cross-examination, Mohamed elaborated on his description of Ali threatening to break the dog's neck. He testified that Ali said "if you think this little dog is going to help you, I'm going to break his neck right now," before stepping up and kicking the dog in the shoulder. RP 224-25. He further testified that the dog suddenly slipped out of its collar and charged at Ali, that Mohamed did not actually notice this happening, but once he did, he ran and helped to pull the dog off of Ali. RP 226-27.

Mohamed testified that despite seeing Ali on the ground and hearing him cry, he thought Ali was joking, and so he did not stop to see if Ali had any injuries, did not ask if Ali was okay, but walked away with Webster and the dog. RP 227-28.

Mohamed was asked by defense counsel if it was true that he was convicted of making a false statement in 2008 and of theft in 2011. He answered affirmatively to both. RP 217.

During closing arguments the deputy prosecutor emphasized Mohamed's version of events as not being credible in light of the

testimony from Ali and Officer Harris regarding the expected behavior from a healthy, well-socialized dog, in light of commands given to him by his perceived master. RP 258-61. The jury returned a verdict of guilty as to one count of assault in the second degree. CP 30.

C. ARGUMENT

SUFFICIENT EVIDENCE SUPPORTS THE JURY'S VERDICT.

Mohamed argues that there was insufficient evidence admitted at trial to establish beyond a reasonable doubt that his dog was a deadly weapon. Brief of Appellant at 6. At issue here is whether there was sufficient evidence of Mohamed's intent to use the dog as a deadly weapon. The facts and circumstances before the trier-of-fact, particularly when viewed in the light most favorable to the State and accepting reasonable inferences to be drawn, amply established Mohamed's intent to use the dog as a deadly weapon.

Evidence is sufficient to support a criminal conviction if, after viewing the evidence in the light most favorable to the State, a rational fact trier could have found 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,

as well as all reasonable inferences from the evidence, which must be drawn in favor of the State and against the defendant. Id.

The State is entitled to rely upon circumstantial evidence to prove its case. State v. Bernson, 40 Wn. App. 729, 733, 700 P.2d 758 (1985). Circumstantial and direct evidence are to be considered equally reliable by the reviewing court in determining the sufficiency of the evidence. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The reviewing court need not be convinced beyond a reasonable doubt of the defendant's guilt. State v. Gentry, 125 Wn.2d 570, 597, 888 P.2d 1105 (1995). The fact-finder is the sole judge of the credibility of the witnesses and of what weight to give their testimony. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Appellate courts must defer to the trier of fact to resolve conflicts in testimony, to weigh evidence, and to draw reasonable inferences from the evidence. State v. Gerber, 28 Wn. App. 214, 216, 622 P.2d 888 (1981). When intent is an element of the crime, "intent to commit a crime may be inferred if the defendant's conduct and surrounding facts and circumstances plainly indicate such an intent as a matter of logical probability." State v. Vasquez, 178 Wn.2d 1, 309 P.3d 318 (2013) (citing State v. Woods, 63 Wn. App. 588, 591, 821 P.2d 1235 (1991)).

Mohamed relies upon the reasoning set forth in In re Pers. Restraint of Martinez, 171 Wn.2d 354, 368 n.6, 256 P.3d 277 (2011), in support of his argument. In Martinez, the Washington Supreme Court held that insufficient evidence supported a conviction for the deadly weapon element of a first degree burglary conviction, and unless a dangerous weapon falls within the narrow category for deadly weapons per se, its status as a deadly weapon rests on the manner in which it is used, attempted to be used, or threatened to be used. Martinez, 171 Wn.2d at 366. The Court held that as neither actual nor threatened use was at issue, the relevant inquiry was whether the State had presented sufficient evidence to prove attempted use. Id. at 368. The Court held that as no one saw Martinez with the knife, he manifested no intent to use it, the sheath on his belt was unfastened and the knife was found along the path of the chase was insufficient to lead a rational fact finder to find intent to use the weapon beyond a reasonable doubt. Id. at 369.

The facts of this case are distinguishable from those in Martinez. In asserting that the evidence showed that Mohamed had possession of the dog, holding it by its leash, when Ali approached the dog and kicked it, causing the dog to break free of its leash, Mohamed disregards the existence of the testimony of Ali and Officer Harris. Ali testified that Mohamed dropped the leash and said “get him, get him,” at which point

the dog jumped on him, taking him to the ground, and bit him on the arm. RP 112-14, 186-87.

The Court in Martinez placed particular emphasis on the fact that no one saw Martinez with the knife, nor did he reach for it at any point during the burglary, flight from the deputies, or his struggle with one deputy. Martinez, at 368. The State's argument relied on the fact that a knife was found along the flight path and the sheath for the knife on Martinez's belt was unfastened. Id. at 369. In contrast to the facts in Martinez, viewed in the light most favorable to the State, the evidence here established that Mohamed was holding the dog's leash, dropped the leash and said "get him, get him," that the dog jumped on Ali, and bit his arm, causing six puncture wounds that required stitches and still caused swelling and numbness at the time of trial, and stood by while others helped pull the dog off of Ali. RP 112-14, 186-91. Mohamed then picked up the dog's leash, walked away, and did not ask Ali if he was alright. RP 188, 215, 216-17. The evidence also established that the dog was very large and well-muscled, on the large end of size for the breed recognized as pit bull, and pit bulls are in the top three ranking for bite strength of recognized dog breeds. RP 156-57, 161-62.

Unlike Martinez, where there were no facts indicating an intent to use the weapon in question, the combination of Mohamed's command of

“get him, get him,” coupled with him dropping the dog’s leash, where the dog was a large and well-muscled pit bull, indicates the intent to use the dog as a deadly weapon to assault Ali. Mohamed’s demeanor after the incident, picking up the dog’s leash and walking away and failing to help Ali, then denying that anything had happened when asked by police, before indicating that Ali had been talking in an insulting way to him, indicates consciousness of guilt and further underscores his intent.

Mohamed also cites to State v. Hoeldt, 139 Wn. App. 225, 160 P.3d 55 (2007), and argues that it is distinguishable from the facts of his case. In Hoeldt, the Court of Appeals of Washington, Division Two, held that the dog (a pit bull), as used, fit the statutory definition of a deadly weapon and affirmed. Hoeldt, at 226. In that case, officers went to Hoeldt’s home to serve an arrest warrant. Officers pushed opened the partially opened door, knocked, and saw Hoeldt standing about 25 feet away, holding what looked like a large pit bull by either the collar or the neck. The dog started to growl and bark at officers, and Hoeldt motioned with his arm, at which point the dog charged toward officers, causing one to shoot and kill the dog. Id. at 226. Hoeldt himself testified and claimed that officers entered his home unannounced, made him put his hands on his head, and asked where the dog was, but before he could answer, the dog ran around to the front door, and the officer shot him. Id. at 226.

The issue of whether a dog can be a deadly weapon was an issue of first impression in Washington courts at the time of the Hoeldt decision, and the court held that a dog is an instrument that can be used to cause death or substantial bodily harm, and can be a deadly weapon under RCW 9A.04.110(6). Id. at 230. The Hoeldt court noted that an instrument that is not defined as a deadly weapon per se may still meet the statutory definition of “deadly weapon” if it is used in a manner capable of causing...substantial bodily [harm], citing State v. Shilling, 77 Wn. App. 166, 171, 889 P.2d 948 (1995) (quoting RCW 9A.04.110(6), where that court found a bar glass was used as a deadly weapon). Hoeldt, at 230.

In measuring the manner of use, courts look at the assailant’s intent, his ability to cause substantial injuries, the degree of force, and the potential or actual injuries inflicted. State v. Barragan, 102 Wn. App. 754, 761, 9 P.3d 942 (2000). The Hoeldt court noted that standard before holding that the evidence established that Hoeldt used his pit bull as a deadly weapon, where the officer described a large, powerful dog that was barking and growling at him, Hoeldt was holding the dog by its neck or collar, and when Hoeldt released the dog, it charged the officer, lunging at his throat and chest. The court held that a large, powerful dog that, by training or temperament, attacks a person in this manner when

intentionally released or directed to do so by its handler, meets the instrumentality “as used” definition of deadly weapon. Hoeldt, at 230.

Mohamed attempts to distinguish the facts of his case from the facts in Hoeldt by relying solely on Mohamed’s trial testimony and disregarding entirely the testimony of Ali and of Officer Harris. Ali testified that Mohamed commanded the dog by both verbal and non-verbal commands to attack him and the dog did so, just as in Hoeldt.

The facts and circumstances, when viewed in the light most favorable to the State, support the conviction for Assault in the Second Degree.

D. CONCLUSION

For the foregoing reasons, Mohamed’s conviction should be affirmed, as sufficient evidence supports the jury’s determination that he intentionally assaulted Ali with a deadly weapon.

DATED this 8th day of April, 2015.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Maureen Cyr, the attorney for the appellant, at Maureen@washapp.org, containing a copy of the Brief of Respondent, in State v. Mowlid Y Mohamed, Cause No. 72133-0, 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.

Dated this 8th day of April, 2015.

U Brame

Name:

Done in Seattle, Washington