

69834-6

69834-6
ORIGINAL

NO. 69834-6-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

PERRI LEE SMITH,

Appellant.

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CLERK OF COURT

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BRUCE HILYER

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. Here, Smith was charged with the crime of assault in the second degree. After Kerrie Wilks got in Kenneth Sudduth's car, Smith revved his engine, rammed Sudduth's car twice, drove into the oncoming lane of traffic next to Sudduth and Wilks, and yelled at them. Viewed in the light most favorable to the prosecution, could any rational trier of fact have found beyond a reasonable doubt that Smith intended to assault Kenneth Sudduth and Kerrie Wilks?

B. STATEMENT OF FACTS

1. PROCEDURAL FACTS.

The State charged defendant Perri Lee Smith by information with assault in the second degree. CP 1. The State alleged that he assaulted Kenneth Sudduth and Kerrie Wilks with his vehicle, a deadly weapon, on June 12, 2012. CP 1. After a jury trial, Smith was convicted as charged. CP 25. The trial court imposed a standard range sentence. CP 26-34. Smith appealed.

2. SUBSTANTIVE FACTS.

Kerrie Wilks, Kenneth Sudduth, and Perri Lee Smith all lived on Vashon Island. RP 117, 154, 214. They had known each other for years. RP 119-21, 156-57. Smith had romantic feelings for Wilks, but Wilks only wanted to be friends with Smith. RP 159-62. Wilks wanted a romantic relationship with Sudduth, but Sudduth only wanted a platonic relationship with her. RP 121. Sudduth and Smith were friends at one time, but that changed several years before this offense. RP 120.

Nancy Vanderpool is a volunteer community advocate on Vashon Island. She knows Smith and Wilks. RP 112-15. Several months prior to this incident, Smith told Vanderpool of his love for Wilks. RP 115. He asked Vanderpool to explain to Wilks how he felt about her. RP 116. Smith also asked Vanderpool about why Wilks was not more interested in him. RP 116.

On June 12, 2012, Wilks and Smith spent time together in Seattle. RP 162. During the day, they had an argument that caused them to return to Vashon Island separately. RP 162-64. It is unclear exactly when Smith returned to Vashon, but it was before Wilks returned to the island. RP 169. While Wilks was on the ferry

to Vashon, she called Sudduth and asked him to pick her up from the ferry dock since she was on foot. RP 164-65.

As Wilks walked away from the ferry terminal, she saw Smith in his truck parked on the shoulder of the road near some blackberry bushes. RP 167, 169. His headlights were off. RP 169. She heard him muttering to himself. RP 167. Wilks said, "Get away from me or I am calling the police." RP 167. Smith yelled at Wilks while she was walking on the road. RP 171. Prior to this incident, he told Wilks what he was going to do if he saw her get into Sudduth's car. RP 171.

Wilks kept walking until she saw Sudduth's car coming toward her. RP 169. Sudduth stopped and Wilks entered his car about a quarter of a mile from the ferry dock. RP 129. Both Sudduth and Wilks were familiar with Smith's truck. RP 120, RP 171.

As she entered Sudduth's car, Wilks said, "Hurry up, hurry up, here he comes." RP 130. She was sweaty, very scared, and talking quickly. RP 129. Wilks repeated, "Here he comes, here he comes." RP 130. Sudduth heard an engine revving. RP 131. He saw Smith's truck in the rearview mirror immediately before Smith rammed into the back of Sudduth's car. RP 131. The car lurched

forward from the truck's impact. RP 131. Seconds later, Smith rammed Sudduth's car a second time. RP 131. The impacts of Smith's car scared both Sudduth and Wilks. RP 132, 175. Wilks thought she was going to die. RP 175.

After Smith rammed Sudduth's car twice, he drove alongside Sudduth by entering the oncoming lane of traffic. RP 134-35. Smith yelled profanity and threw something at the car as he drove next to them. RP 135, 174. Smith then passed Sudduth and continued driving. RP 138. Sudduth called 911 and followed Smith for a short time. RP 137-38. Smith turned off the main road, but Sudduth continued driving into town because he knew a policeman was there. RP 138.

Sudduth and Wilks contacted King County Sheriff's Deputy Joe Dickson to report the incident. RP 87. Later that night, Deputy Dickson and Deputy Juan Gil arrested Smith at his home. RP 103.

Sudduth's car was damaged as a result of Smith's actions. RP 141. The rear hatch did not open, the taillights and back bumper were broken, and the quarter panels on both sides of the car were dented. RP 141. Sudduth's neck was stiff and Wilks suffered psychologically because of the assault. RP 141, 177.

C. ARGUMENT

1. THE EVIDENCE WAS SUFFICIENT TO SUPPORT SMITH'S CONVICTION FOR ASSAULT IN THE SECOND DEGREE.

Smith claims that there is insufficient evidence to support his conviction for assault in the second degree. Because there is sufficient evidence to sustain this charge, Smith's conviction should be affirmed.

The Washington State Supreme Court explained the standard to use when reviewing a claim of insufficiency of the evidence in State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004):

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Circumstantial evidence and direct evidence are equally reliable. Credibility determinations are for the trier of fact and are not subject to review. This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.

A reviewing court evaluates whether "the record contained sufficient evidence from which the trier of fact could reasonably infer a defendant's guilt under the beyond a reasonable doubt

standard.” State v. Bridge, 91 Wn. App. 98, 100, 955 P.2d 418 (1998). In determining whether there is sufficient evidence, the reviewing court determines not “whether *it* believes the evidence at trial established guilt beyond a reasonable doubt,” but whether “*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (emphasis added).

- a. The State Presented Sufficient Evidence Supporting Smith’s Conviction for Assault in the Second Degree.

Smith asserts that there was insufficient evidence to support his conviction for assault in the second degree, arguing that the State failed to present evidence from which the trier of fact could reasonably infer that he intended to assault Sudduth and Wilks when he rammed his truck into Sudduth’s vehicle twice. The evidence presented at trial, viewed in the light most favorable to the prosecution, permitted a rational trier of fact to find that Smith intended to assault Sudduth and Wilks beyond a reasonable doubt. The evidence showed that Smith revved his engine before colliding

with Sudduth's car, that he rammed Sudduth's car with his truck twice, and that he was jealous of Wilks spending time with Sudduth. For these reasons, Smith's claim should be rejected.

A person is guilty of assault in the second degree if that person assaults another with a deadly weapon. RCW 9A.36.021(1)(c). Courts refer to the common law definition of the term "assault" since the criminal code does not define the term. State v. Abuan, 161 Wn. App. 135, 154, 257 P.3d 1 (2011). Three definitions of assault have been recognized by Washington courts: (1) an unlawful touching; (2) an attempt, with unlawful force, to inflict bodily injury upon another; and (3) putting another in apprehension of bodily harm. State v. Elmi, 166 Wn.2d 209, 215, 207 P.3d 439 (2009). In this case, the jury was instructed on all three definitions of assault approved by Washington courts. CP 19.

A person acts with intent when he has the objective of accomplishing a result that constitutes a crime. RCW 9A.08.010(1)(a). The State must prove specific intent either to create apprehension of bodily harm or to cause bodily harm, an essential element of assault in the second degree. State v. Byrd, 125 Wn.2d 707, 713, 887 P.2d 396 (1995).

In this case, the State presented evidence from which a reasonable trier of fact could find that Smith intended to assault Sudduth and Wilks when he rammed Sudduth's vehicle with his truck. First, the State introduced evidence that Smith accelerated before he collided with Sudduth's car. Sudduth described hearing an engine revving and seeing Smith's truck in his rearview mirror. RP 130-31. Just before the impact, Wilks warned Sudduth that Smith was coming and urged him to go. RP 130. The revving of Smith's engine shows his design to cause, at a minimum, apprehension of harm to Sudduth and Wilks.

Also indicative of Smith's intent to assault Sudduth and Wilks is the number of occasions he caused his truck to collide with the back of Sudduth's car and the timing of the crashes. Smith hit Sudduth's car twice, in rapid succession. The evidence showed that he forcefully struck the vehicle carrying Sudduth and Wilks twice. RP 131. Both Sudduth and Wilks described the impacts as "ramming" that caused the car to lurch forward. RP 131, 171. In addition, Smith hit Sudduth's car a short time after Wilks walked past Smith on the road. RP 170. Notably, prior to this incident Smith told Wilks what he was going to do if he saw Wilks get into Sudduth's car. RP 171. It was reasonable for the jury to infer that

Smith's actions that night were a direct result of his jealousy and anger. The number of times Smith hit the car, as well as the timing of the assault, demonstrate Smith's intent to hurt Sudduth and Wilks.

Furthermore, Smith drove up alongside Sudduth's car after the impacts, yelled profanity, and threw something at Sudduth and Wilks. RP 135. Smith's actions after the assault reveal his anger and his intent to harm Sudduth and Wilks.

Finally, the State presented evidence of Smith's motive for this crime. The jury was free to consider the reasons why Smith would assault Sudduth and Wilks in deciding whether the State had proved intent. Vanderpool, a third party, testified that Smith had strong romantic feelings for Wilks. RP 115-16. In addition, Smith and Wilks argued earlier in the day. RP 165. In light of Smith's feelings, it is reasonable to infer that he was jealous of Sudduth. Further, it is a reasonable inference that Smith would express his jealousy by ramming the car carrying Sudduth and Wilks.

Sufficient evidence was also presented as to the other elements of this crime. The jury was instructed that a vehicle can be a deadly weapon. CP 20. Smith was driving a blue and white Ford truck when he rammed Sudduth's hatchback car. RP 120,

141. There was sufficient evidence such that a reasonable trier of fact could have found all the elements of the crime beyond a reasonable doubt.

Viewing the evidence in the light most favorable to the prosecution and taking all reasonable inferences therefrom, a reasonable trier of fact could have found that Smith intended to assault Sudduth and Wilks beyond a reasonable doubt.


D. CONCLUSION

For the foregoing reasons, Smith's conviction for the crime of assault in the second degree should be affirmed.

DATED this 11th day of October, 2013.

Respectfully submitted,

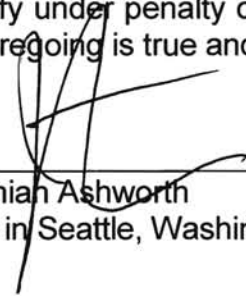
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Thomas M. Kummerow, the attorney for the appellant, at the Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA, 98101, containing a copy of the Brief of Respondent, in STATE OF WASHINGTON V. PERRI LEE SMITH, Cause No. 69834-6-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.



Jeremian Ashworth
Done in Seattle, Washington

October 11, 2013
Date