

No. 47332-1-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

STEVEN KARL EDWARDS,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 13-1-03938-1
The Honorable Stephanie Arend, Judge

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. The State failed to present sufficient evidence to prove all of the elements of first degree burglary beyond a reasonable doubt.
2. The State failed to present sufficient evidence to prove that Steven Edwards intended to commit a crime when he entered or remained unlawfully in his mother's residence.
3. The State failed to present sufficient evidence to prove all of the elements of first degree assault beyond a reasonable doubt.
4. The State failed to present sufficient evidence to prove that Steven Edwards intended to cause the victim great bodily harm.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Where the evidence showed that Steven Edwards entered his mother's residence as he ran away from the pursuing victim and law enforcement, and that his mother was not inside when he entered the residence, did the State prove beyond a reasonable doubt that Edwards intended to commit a crime when he entered or remained inside the residence in violation of a no-contact order? (Assignments of Error 1 & 2)

2. Where the evidence showed that Steven Edwards fired a gun at close range but without hitting the victim, and that Edwards threatened to shoot the victim only if the victim continued to pursue him, did the State prove beyond a reasonable doubt that Edwards intended to cause great bodily harm? (Assignments of Error 3 & 4)

III. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The State charged Steven Karl Edwards with one count of first degree assault (RCW 9A.36.011), one count of first degree robbery (RCW 9A.56.190, .200), one count of first degree burglary (RCW 9A.52.020), and one count of unlawful possession of a firearm (RCW 9.41.040). (CP 1-3) The State further alleged that Edwards was armed with a firearm when he committed the first three offenses. (CP 1-2) The jury convicted Edwards as charged. (74-83; TRP7 499-500)¹

Edwards has an offender score of nine-plus because of a series of identity theft and unlawful possession of a controlled

¹ The transcripts of trial, labeled volumes 1 through 7, will be referred to as "TRP" followed by their volume number (TRP#). The transcript of sentencing will be referred to as "SRP." Any remaining transcripts will be referred to by the date of the proceeding.

substance offenses committed on the same date in 2008. (CP 195-96, 201) One of the identity theft convictions also included a firearm sentence enhancement. (CP 96, 127-28)

This resulted in a standard range of 240 to 318 months for Edwards' most serious current offense (first degree assault). (CP 196, 202) And, as a result of his prior firearm sentence enhancement, the length of the three mandatory firearm sentence enhancements in this case were doubled to 120 months each. (SRP 6-7; CP 97,196, 222)

The trial court found that Edwards' presumptive sentence range, coupled with the mandatory 360 months of firearm sentence enhancements, would result in a sentence that is clearly excessive in light of the purposes of the Sentence Reform Act. (CP 221-22; SRP 22) The trial court imposed a 60 month base sentence, which is the mandatory minimum for Edwards' assault conviction, and the mandatory firearm enhancements, for a term of confinement totaling 420 months (35 years). (SRP 6-7, 22; CP 95, 202, 205, 222) The court also found no evidence that Edwards would have the ability to pay legal financial obligations, and so declined to impose any discretionary fines. (SRP 23; CP 203) This appeal timely follows. (CP 214-15)

B. SUBSTANTIVE FACTS

In the afternoon of October 11, 2013, Peter Lahmann stopped by his mother's Parkland home to make sure everything was in order while his mother was away. (TRP4 201, 202) He parked his truck in the driveway, then walked into the backyard. (TRP4 204, 205) As he returned to the front of the house, he saw a man and a woman walking together on the sidewalk in front of the home. (TRP4 205, 206) Lahmann saw the man, who was wearing a red hat, walk over to his truck, duck down, then quickly stand up again. (TRP4 205, 206) Lahmann approached the man, but he and the woman ran away. (TRP4 206)

Lahmann looked into his truck and noticed that his iPhone, which he had left in the cab, was now missing. (TRP4 207) He immediately assumed that the man had taken the iPhone, so he began to chase after the couple. (TRP4 207) Lahmann heard a popping sound but, not knowing what the sound was, he continued to follow the couple. (TRP4 208)

Lahmann rounded the corner and came face to face with the man, who was standing in the street pointing a gun towards Lahmann. (TRP4 208) According to Lahmann, the man said, "I'm going to kill you if you don't quit following me," then immediately

fired the gun. (TRP 208-09) The couple then jogged away. (TRP4 210) Several neighbors heard gunshots and saw a man point a gun towards Lahmann and fire it. (TRP3 115, 116, 120-21, 133-34, 143, 144, 145)

Kyle Harrington and Thomas Tegge were driving past in their work truck as the incident unfolded. (TRP3 157, 158-59; TRP4 179, 180) They noticed a man and woman running down the street, and saw the man turn and fire several times at another man behind them, then the couple ran away. (TRP3 159; TRP4 182, 183) Lahmann yelled to Harrington and Tegge that the man had stolen his phone, and asked them to call 911. (TRP3 159, 161; TRP4 182)

Lahmann continued to chase the couple and, according to Lahmann, the man fired his gun a few more times as he ran away. (TRP4 211) Tegge called 911, and Harrington decided to follow the couple in their truck. (TRP3 161; TRP4 184) Harrington and Tegge saw the couple run into a house, and they informed the 911 operator of the location. (TRP3 161, 162; TRP4 188, 189, 190) Several police officers arrived shortly after. (TRP4 190, 247)

Anita Thompson is Steven Edwards' mother and she lives in a converted garage, which is attached by a carport to her

daughter's Parkland house. (TRP4 233-34) On the morning of October 11, 2013, Edwards and his female friend, Shannon Scott, were at the residence but left around 11:00 AM. (TRP4 234-35) Thompson later left to go shopping, and when she arrived home that afternoon she saw her son and Scott run towards the residence, through a gate and into the garage. (4TRP 235, 236, 237, 238) She followed them inside and saw them, out of breath, leaning against the wall. (TRP4 241) Thompson asked Edwards and Scott what had happened, but they did not respond. (TRP4 241) Moments later, police officers arrived and ordered everyone to come out of the garage. (TRP4 242, 253)

Thompson, Edwards and Scott all exited the garage one-by-one. (TRP4 253, 255, 256, 257, 268) Edwards and Scott, who matched the physical description of the suspects, were taken into custody. (TRP4 256-57, 269-70) As Edwards was escorted past Scott to a waiting patrol car, he said to the officer, "She didn't have anything to do with it. I did it. I took the phone." (TRP4 258; TRP5 303)

During a subsequent search of the garage, police found Lahmann's iPhone, a .22 caliber handgun, and a red hat. (TRP4 207; TRP5 320, 321, 323, 326) Officers also found a .22 caliber

shell casing in the street where the incident occurred. (TRP4 279) A forensic examiner found a finger print on the iPhone that matched Edwards' print, and markings on the recovered shell casing indicated it was fired from the gun found in the garage. (TRP5 366, 369, 393) Edwards had a prior conviction that made him ineligible to possess a firearm, and there was also a court order in existence prohibiting Edwards from contacting his mother or entering her residence. (TRP4 231-32; TRP5 358; CP 17)

IV. ARGUMENT & AUTHORITIES

“Due process requires that the State provide sufficient evidence to prove each element of its criminal case beyond a reasonable doubt.” City of Tacoma v. Luvene, 118 Wn.2d 826, 849, 827 P.2d 1374 (1992) (citing In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)). Evidence is sufficient to support a conviction only 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. 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 inferences that reasonably can be drawn therefrom.” Salinas, 119 Wn.2d at 201.

The reviewing court should reverse a conviction and dismiss the prosecution for insufficient evidence where no rational trier of fact could find that all elements of the crime were proven beyond a reasonable doubt. State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996); State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998).

A. THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT EDWARDS INTENDED TO COMMIT A CRIME WHILE INSIDE HIS MOTHER'S RESIDENCE.

To convict a defendant of first degree burglary, the State must prove that the defendant (1) enter[ed] or remain[ed] unlawfully in a building, and (2) had the "intent to commit a crime against a person or property therein".² The State's evidence must independently satisfy each element. See State v. Stinton, 121 Wn. App. 569, 573, 89 P.3d 717 (2004).

A person enters or remains unlawfully if he does so without license, invitation or privilege. RCW 9A.52.010(3); State v. Lopez, 105 Wn. App. 688, 694-95, 20 P.3d 978 (2001). Here, the State established that Edwards' entry into the garage home of his mother

² The first degree burglary statute also requires proof that the defendant was armed with a deadly weapon or assaulted another person. RCW 9A.52.020. The State's evidence indicated that Edwards was holding a firearm at the time he entered his mother's garage residence. (TRP4 208, 211; TRP5 326)

was unlawful because a no-contact order prohibited him from entering her residence. (4TRP 231-32)

If the State has proven unlawful entry, the intent to commit a crime may be inferred, unless the evidence demonstrates the entry was without criminal intent. RCW 9A.52.040; State v. Bennett, 20 Wn. App. 783, 788-89, 582 P.2d 569 (1978). This permissive inference does not relieve the State from meeting its burden to prove the defendant intended to commit a crime. Stinton, 121 Wn. App. at 573. When the inference is the “sole and sufficient” proof of the element of intent, the State must prove the inference beyond a reasonable doubt. State v. Brunson, 128 Wn.2d 98, 107-08, 905 P.2d 346 (1995).

Intent may not be inferred from evidence that is “patently equivocal.” See State v. Jackson, 112 Wn.2d 867, 774 P.3d 1211 (1989) (defendant’s shattering of a window was consistent with two different interpretations, attempted burglary and malicious mischief, and therefore inference of intent to commit a crime within a building could not follow).

Several Washington cases have noted that a violation of a no contact order may serve as the predicate crime against a person for the purposes of residential burglary. See Stinton, 121 Wn. App.

at 577; State v. Spencer, 128 Wn. App. 132, 114 P.3d 1222 (2005).

But both Stinton and Spencer reached this conclusion because, in both cases, there was an actual unwanted or harassing confrontation between the protected party beyond the mere entering or remaining in the protected residence. In Stinton, this Court noted:

Stinton's protection order contained two provisions prohibiting separate and distinct conduct toward McNeill. And the evidence of Stinton's harassing and threatening McNeill was separate and distinct from the evidence supporting his unlawful entry.

Stinton . . . appears to be suggesting that it is improper to prove his intent to commit a crime therein merely with evidence that he unlawfully entered the premises. We agree.

Here, Stinton concedes the unlawful entry element of residential burglary and the State presented independent evidence of Stinton's intent to commit a crime therein, [the] harassing [of the protected party]. [T]he State has presented proof of both prongs of residential burglary[.]

Stinton, 121 Wn. App. at 575.

In this case, on the other hand, the State presented no independent evidence that Edwards had any intent to commit a crime when he entered his mother's garage residence. Edwards' mother was just arriving home as Edwards approached the home, and she entered the garage after Edwards was already inside.

(TRP4 235, 238, 241) There is no evidence that Edwards knew she would be arriving home and no evidence that he made any effort to prolong their contact after she entered the garage.

Instead, the evidence clearly showed that Edwards' intent when he entered the garage was simply to hide. Though contact with his mother resulted from his entry, there is absolutely no evidence that his intent was to make or continue contact when he entered the garage.

There must be proof beyond mere unlawful entry to support a conclusion of intent to commit a crime within the protected premises. Because the State failed to present any evidence to support an inference that Edwards intended to commit a crime when he entered or remained in the garage, Edwards' burglary conviction and its firearm special verdict must be reversed.³

B. THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT EDWARDS INTENDED TO CAUSE LAHMANN GREAT BODILY HARM.

The State charged Edwards with first degree assault, pursuant to RCW 9A.36.011(1)(a). (CP 1-2) That statute provides, in relevant part:

³ If an offense is vacated, the associated firearm enhancement must also be vacated. See State v. Davis, 177 Wn. App. 454, 465 fn.10, 311 P.3d 1278 (2013).

(1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm:

(a) Assaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death[.]

RCW 9A.36.011(1)(a). “Assault in the first degree requires a specific intent” to cause great bodily harm. State v. Wilson, 125 Wn.2d 212, 218, 883 P.2d 320 (1994). A person acts with intent when he or she acts with the objective or purpose to accomplish a result constituting a crime. RCW 9A.08.010(1)(a). “Evidence of intent . . . is to be gathered from all of the circumstances of the case, including not only the manner and act of inflicting the wound, but also the nature of the prior relationship and any previous threats.” State v. Choi, 55 Wn. App. 895, 906, 781 P.2d 505 (1989). “Specific intent must be proved as an independent fact and cannot be presumed from the commission of the unlawful act.” State v. Louther, 22 Wn.2d 497, 502, 156 P.2d 672 (1945).

For example, in State v. Pedro, the defendant and the victim had a history of animosity, and the defendant first assaulted the victim by hitting him over the head with a rock. 148 Wn. App. 932, 940, 201 P.3d 398 (2009). Some days later, the defendant and the victim found themselves on the same Metro bus. The victim exited

through one door and began running away, while the defendant exited another door and gave chase. The defendant fired a gun at the victim several times as they ran. 148 Wn. App. at 940.

On appeal, the court found sufficient evidence of intent to inflict great bodily harm. Pedro, 148 Wn. App. at 951-52. The court noted: “Given the extensive testimony about the prior altercations between [the defendant and the victim], and the fact that [the defendant] was running after [the victim], a rational trier of fact could conclude beyond a reasonable doubt that [the defendant] committed assault.” 148 Wn. App. at 951.

Similarly, in State v. Hoffman, the evidence showed that the defendant lay in wait for approaching police officers who were searching the property of the defendant, and that the defendant and his accomplice fired multiple shots directly at two officers. 116 Wn.2d 51, 61-62, 804 P.2d 577 (1991). The Court found sufficient evidence to prove intent to kill. 116 Wn.2d at 84-85.

And in State v. Gallo, the defendant verbally threatened to kill the victim, then “took careful aim” at her head before firing a fatal shot. 20 Wn. App. 717, 729, 582 P.2d 588 (1978). The Court likewise found sufficient evidence of intent to kill. 20 Wn. App. at 729.

There is no such evidence in this case. Edwards and Lahmann have no history together. Edwards' "threat" to Lahmann was that Edwards would shoot if Lahmann did not stop following him. That statement was clearly intended to dissuade Lahmann from following Edwards, not as a statement of intent to cause harm. Despite being at close range, Lahmann was never hit. And unlike in Pedro, Edwards was not running after the victim, instead the victim was running after Edwards.

The evidence certainly shows that Edwards intended to scare Lahmann away, but not that he intended to cause Lahmann great bodily harm. Otherwise, why would he continue to distance himself from Lahmann? And why would Lahmann continue to pursue Edwards if he believed Edwards intended to carry out his threat? While Edwards' actions in firing the weapon as he ran away from Lahmann surely shows recklessness or negligence, it does not show intent to cause great bodily harm.

The State therefore failed to prove that Edwards committed first degree assault, and this conviction and its firearm sentence enhancement must both be reversed and dismissed.

V. CONCLUSION

There was no evidence that Edwards entered his mother's

garage residence for any other reason than to hide from Lahmann and law enforcement officers. Accordingly, the State failed to prove that he intended to commit a crime when he unlawfully entered the garage, and Edwards' burglary conviction must be reversed. Likewise, there was no evidence that Edwards intended to do anything other than scare Lahmann away when he threatened to shoot and fired the gun as Lahmann chased Edwards back to his mother's home. Accordingly, the State failed to prove that he intended to cause Lahmann great bodily harm, and Edwards' assault conviction must also be reversed.

DATED: September 18, 2015



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CERTIFICATE OF MAILING

I certify that on 09/18/2015, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Steven K. Edwards, DOC# 327103, Washington State Penitentiary, 1313 N 13th Ave., Walla Walla, WA 99362.



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