

NO. 47332-1-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

STEVEN KARL EDWARDS, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Stephanie Arend

No. 13-1-03938-1

BRIEF OF RESPONDENT

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Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

 1. Was the evidence sufficient for defendant’s conviction of burglary in the first degree when he, while armed with a firearm, entered his mother’s residence and had contact with her in direct contravention to a no contact order prohibiting him from being at this residence and prohibiting him from having contact with her?..... 1

 2. Was the evidence sufficient to show defendant’s intent to commit great bodily harm when he aimed and fired multiple shots at the victim?..... 1

B. STATEMENT OF THE CASE. 1

 1. Procedure 1

 2. Facts..... 2

C. ARGUMENT..... 7

 1. THERE WAS SUFFICIENT EVIDENCE FROM WHICH A RATIONAL TRIER OF FACT COULD HAVE FOUND THE ESSENTIAL ELEMENTS OF BURGLARY IN THE FIRST DEGREE BEYOND A REASONABLE DOUBT.. 7

 2. THERE WAS SUFFICIENT EVIDENCE FROM WHICH A RATIONAL TRIER OF FACT COULD HAVE FOUND THE ESSENTIAL ELEMENTS OF ASSAULT IN THE FIRST DEGREE BEYOND A REASONABLE DOUBT.
 11

D. CONCLUSION. 13

Table of Authorities

State Cases

<i>State v. Brockob</i> , 159 Wn.2d 311, 336, P.3d 59 (2006).....	7, 8
<i>State v. Cannon</i> , 120 Wn. App. 86, 90, 84 P.3d 283 (2004)	7
<i>State v. Delmarter</i> , 94 Wn.2d 634, 638, 618 P.2d 99 (1980).....	8, 11
<i>State v. Devitt</i> , 152 Wn. App. 907, 218 P.3d 647 (2009).....	10
<i>State v. Green</i> , 94 Wn.2d 216, 221, 616 P.2d 628 (1980)	7
<i>State v. Hoffman</i> , 116 Wn.2d 51, 84-85, 804 P.2d 577 (1991)	11
<i>State v. Kilponen</i> , 47 Wn. App. 912, 916, 737 P.2d 1024 (1987).....	9
<i>State v. Locke</i> , 175 Wn. App. 779, 788-89, 307 P.3d 771, 776 (2013)	8
<i>State v. Lopez</i> , 107 Wn. App. 270, 276, 27 P.3d 237 (2001).....	7
<i>State v. Mann</i> , 157 Wn. App. 428, 39, 237 P.3d 966 (2010).....	12
<i>State v. Myers</i> , 133 Wn.2d 26, 37, 941 P.2d 1102 (1997)	7
<i>State v. Salinas</i> , 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)	8
<i>State v. Sanchez</i> , 166 Wn. App. 304, 310, 271 P.3d 264 (2012).....	9, 10
<i>State v. Shelton</i> , 71 Wn.2d 838, 839, 431 P.2d 201 (1967).....	11
<i>State v. Spencer</i> , 128 Wn. App. 132, 140-141, 114 P.3d 1222 (2005).....	9
<i>State v. Stinton</i> , 121 Wn. App. 569, 577, 89 P.3d 717 (2004).....	9, 10
<i>State v. Wilson</i> , 136 Wn. App. 596, 611, 150 P.3d 144 (2007)	9

Statutes

RCW 9A.08.010	11
RCW 9A.36.011(1)(a).....	11

RCW 9A.52.010(5).....	8
RCW 9A.52.020	8
RCW 9A.52.040	8

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Was the evidence sufficient for defendant's conviction of burglary in the first degree when he, while armed with a firearm, entered his mother's residence and had contact with her in direct contravention to a no contact order prohibiting him from being at this residence and prohibiting him from having contact with her?
2. Was the evidence sufficient to show defendant's intent to commit great bodily harm when he aimed and fired multiple shots at the victim?

B. STATEMENT OF THE CASE.

1. Procedure

On October 14, 2013, the State charged Steven Karl Edwards ("defendant") with assault in the first degree, robbery in the first degree, burglary in the first degree, and unlawful possession of a firearm in the second degree. CP 1-3. With the exception of unlawful possession of a firearm in the second degree, each charge carried the aggravating factor that defendant was armed with a firearm. CP 1-3.

Jury trial began on November 24, 2014. 1 RP 1. The jury convicted the defendant as charged. 7 RP 499-500, CP 74-83. The trial court sentenced defendant to 420 months in prison, which was a

downward departure of at least 180 months from his potential standard range. CP 197-211.

2. Facts

On October 11, 2013, Peter Lahmann was checking on his mother's house near 106th and Park Avenue South because she was out of town. 4 RP 201-202. He parked his truck in front of the garage. 4 RP 203. As he walked back to his truck, Lahmann saw two individuals, defendant and a woman, near his truck. 4 RP 205. Defendant ducked down and then came up. 4 RP 205. When the two saw him, they took off running. 4 RR 206.

Lahmann reached his truck and saw that his Apple iPhone was missing. 4 RP 207. Believing that defendant had stolen the phone, Lahmann pursued them. 4 RP 207. As Lahmann left the vehicle, he heard some pops, but did not register that it was gunfire. 4 RP 208.

Lahmann saw the two people run left onto 106th. 4 RP 208. As he rounded the corner, defendant was standing in the street pointing a firearm at him. 4 RP 208. Defendant said, "I'm going to kill you if you don't quit following me." 4 RP 208. Defendant then fired the gun. 4 RP 209.

Two men drove up in a company vehicle and asked Lahmann if defendant was shooting at him. 4 RP 209. He said yes and asked them to call 911. 4 RP 209. Lahmann could see defendant and the woman jogging up 106th. 4 RP 210. He continued to follow them. 4 RP 210. As

he followed, there were one or two more shots fired. 4 RP 211. He remembered defendant turned and made another shot in his direction as he continued to follow defendant. 4 RP 222. Lahmann lost sight of the two people, but the men in the truck had followed them and saw them go into the garage of a house. 4 RP 212. Within a minute, police had arrived on the scene. 4 RP 212.

Mark Smith was heading out of his house when he heard a popping noise. 3 RP 115. Smith then saw his neighbor, Lahmann, chasing defendant and a female, who were quickly walking backwards away from Lahmann. 3 RP 116. As he watched, Smith saw defendant raise up his arms and fire a round at Lahmann with a small caliber weapon. 3 RP 117-118. Even after being shot at by defendant, Lahmann continued to give chase. 3 RP 117.

Smith went to retrieve his own gun. 3 RP 117. By the time he returned, the group was halfway up the hill towards Pacific Avenue. 3 RP 118. After he lost sight of the group because of a dip in the road, he heard at least three more gunshots, and possibly a fourth shot. 3 RP 121-122. Smith located a shell casing in the road. 3 RP 121.

Joseph Messier was parked at his parent's house on 106th Street South. 3 RP 139. He saw a couple of people running up the street and heard gunshots. 3 RP 133-134. His van was shot in the back corner panel. 3 RP 134.

Jennifer Rowe was doing yard work on Park Avenue South. 3 RP 143. She heard a gunshot. 3 RP 143. She looked up and saw two people, defendant and a female, running away from another older man. 3 RP 144. She saw defendant hold up his arms and it looked like he was shooting at the older man. 3 RP 144. The older man looked at her like he wanted help. 3 RP 145. She took out her phone and called 911. 3 RP 145. She could not believe the older man did not get shot. 3 RP 145-146. As she was talking to 911, she heard another gunshot. 3 RP 146.

Thomas Tegge works for a pesticide company. 4 RP 179. He and his partner, Kyle Harrington, were driving their truck down 106th. 4 RP 181. They saw defendant and woman running. 4 RP 182. Defendant turned around and shot at somebody, a man running over the hill. 4 RP 182. Defendant and woman ran for another 30 or 40 feet and then shot at the other man again. 4 RP 182. Tegge pulled up to the man being shot at and he asked them to call 911. 4 RP 182. The man said defendant and the woman stole his cell phone and laptop from his car and are now shooting at him. 4 RP 182.

Tegge turned his truck around to follow. 4 RP 184. As he drove, Tegge saw defendant turn around and shoot again. 4 RP 187. The older gentleman kept chasing him. 4 RP 187. Defendant and the woman then ran into a house. 4 RP 188. A police officer pulled up next and told them to stay where they were. 4 RP 191. Tegge then heard sirens and officers came from every directions. 4 RP 192.

Similar to his coworker, Harrington testified that he saw defendant turn around and fire four or five shots at an old guy. 3 RP 159. Defendant and the female then started running away from the guy. 3 RP 159. The old guy said, “Hey, stop those guys; they stole my cell phone.” 3 RP 159. The old guy asked them to call the cops. 3 RP 161. Defendant then shot towards the guy a couple more times. 3 RP 159.

Anita Thompson, defendant’s mother, lives in detached garage converted into living space at her daughter’s residence on 104th. 4 RP 233-234. She had been running errands and was pulling into the driveway when she saw defendant and his friend Shannon came running towards the house. 4 RP 235. They ran into the garage. 4 RP 238. She went in and saw them sitting up against the garage door and they were out of breath. 4 RP 241. She kept asking them why they were out of breath and what had happened, but neither would answer. 4 RP 241. Then police officers were demanding that they come out of the residence with their hands up. 4 RP 242.

A no contact order issued by the Pierce County District Court prohibited defendant from coming near or having any contact with Thompson. 4 RP 231. The no contact order also prohibited defendant from entering, knowingly coming within or knowingly remaining within 500 feet of Thompson’s residence or workplace. 4 RP 231-232. Defendant had knowledge of the order and has signed it. 4 RP 232.

Pierce County Sheriff's Department Deputy James Oetting was on patrol in Parkland, Washington. 4 RP 247. He was dispatched to a shots fired call. 4 RP 247. He arrived at the scene and learned that the suspect in the shooting was in a garage. 4 RP 252. He ordered everyone in the garage to come out. 4 RP 253. A middle-aged woman [Thompson] came out first. 4 RP 253. A middle-aged man came out second. 4 RP 255. Shannon Scott came out next and she was taken into custody. 4 RP 256. Deputy Oetting was questioning Ms. Scott and heard that defendant had exited the garage and been taken into custody as well. 4 RP 257.

Pierce County Sheriff's Department Deputy Daryl Shuey took custody of defendant. 5 RP 303. Defendant admitted that he had stolen the phone, but said that Shannon Scott was not involved. 5 RP 303.

Detective Catey obtained a search warrant for the garage. 5 RP 314. He located the stolen iPhone under a bed. 5 RP 321. The phone was processed for fingerprints and the fingerprints were found to match defendant. 5 RP 369.

Detective Catey also located a Taurus .22 caliber semiautomatic handgun in the pocket of a jacket. 5 RP 326. Brenda Lawrence, from the Washington State Patrol Crime Lab, determined that the bullet cartridge in the street found by Smith was fired from the gun. 5 RP 393.

C. ARGUMENT.

1. THERE WAS SUFFICIENT EVIDENCE FROM WHICH A RATIONAL TRIER OF FACT COULD HAVE FOUND THE ESSENTIAL ELEMENTS OF BURGLARY IN THE FIRST DEGREE BEYOND A REASONABLE DOUBT.

In a criminal case, a defendant may challenge the sufficiency of the evidence before trial, at the end of the State's case in chief, at the end of all of the evidence, after the verdict, and on appeal. *State v. Lopez*, 107 Wn. App. 270, 276, 27 P.3d 237 (2001). "In a claim of insufficient evidence, a reviewing court examines whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,' 'viewing the evidence in the light most favorable to the State.'" *State v. Brockob*, 159 Wn.2d 311, 336, P.3d 59 (2006) (quoting *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)). Thus, sufficient evidence supports a conviction when, viewing it in the light most favorable to the State, a rational fact finder could find the essential elements of the crime beyond a reasonable doubt. *State v. Cannon*, 120 Wn. App. 86, 90, 84 P.3d 283 (2004).

"A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Id.* (quoting *State v. Myers*, 133 Wn.2d 26, 37, 941 P.2d 1102 (1997)). All reasonable inferences from the evidence must be drawn in favor of the State and

interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Finally, determinations of credibility are for the fact finder and are not reviewable on appeal. *Brockob*, 159 Wn.2d at 336; *State v. Locke*, 175 Wn. App. 779, 788-89, 307 P.3d 771, 776 (2013). In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99, 101 (1980).

To convict defendant of burglary in the first degree, the State proved that defendant, with the intent to commit a crime against a person or property therein, entered or remained unlawfully in a building, and in entering or while in the building, or in immediate flight therefrom, the defendant was armed with a deadly weapon or assaults any person. RCW 9A.52.020. A person “enters or remains unlawfully” in or upon premises when he is not then licensed, invited, or otherwise privileged to so enter or remain. RCW 9A.52.010(5). Any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent. RCW 9A.52.040. The particular crime the burglar intended to commit inside the burglarized

premises is not an element of burglary; all that need be shown is the intent to commit a crime on the premises. *State v. Kilponen*, 47 Wn. App. 912, 916, 737 P.2d 1024 (1987).

Violation of a protection order can serve as the predicate crime for residential burglary. *State v. Stinton*, 121 Wn. App. 569, 577, 89 P.3d 717 (2004). Violation of a protection order is a continuing crime, so a defendant may violate a protection order by being within a dwelling and may be prosecuted separately for both a violation of a protection order and also for a burglary. *State v. Spencer*, 128 Wn. App. 132, 140-141, 114 P.3d 1222 (2005). A court can specifically tailor a protection order to criminalize personal contact between persons, but may also add protections criminalizing contact with a party's residence or workplace. *State v. Wilson*, 136 Wn. App. 596, 611, 150 P.3d 144 (2007). The consent of a protect person cannot override a court order excluding a person from the residence, especially where the order prohibits the party from being at the residence. *State v. Sanchez*, 166 Wn. App. 304, 310, 271 P.3d 264 (2012).

In the present case, the evidence showed that a no contact order was issued by the Pierce County District Court and it specifically prohibited defendant from coming near or having any contact with Thompson. 4 RP 231. The no contact order also prohibited defendant from entering, knowingly coming within or knowingly remaining within

500 feet of Thompson's residence or workplace. 4 RP 231-232.

Defendant had knowledge of the order and has signed it. 4 RP 232.

This case is similar to *Stinton* and *Sanchez*. When defendant entered Thompson's residence, he violated the no contact order prohibiting him from being there. This constituted an unlawful entry into the residence in violation of the no contact order, which specifically excluded him from this residence. When defendant contacted Thompson, he also violated the no contact order by having contact with her¹. Thus there is sufficient evidence that defendant's contact with Thompson was separate and distinct from the evidence of his unlawful entry. *Stinton*, 121 Wn. App. 575. As this conduct occurred in Thompson's dwelling, his conduct constituted a burglary. Finally, because defendant was armed with a firearm when he was in Thompson's dwelling having contact with her, he committed the crime of burglary in the first degree. There was sufficient evidence that defendant committed burglary in the first degree.

¹ Contrary to defendant's assertion that he did not know Thompson was home (Brief of Appellant, 11), Thompson testified that she was at home with defendant and Shannon Scott *prior* to the incident. 4 RP 235. Defendant and Scott left at approximately 11:00 a.m. 4 RP 235. Thompson then left the residence, but was pulling into the driveway and saw defendant and Scott running towards her and the residence. 4 RP 235. Defendant and Scott then ran into the garage, where Thompson lives. 4 RP 238. Even assuming defendant did not know that Thompson was home, the jury could infer that defendant *intended* to contact her, given this is her residence, in violation of the no contact order. If defendant was merely trying to hide, he could have chosen any other house or garage along the pursuit; however, he chose his mother's house, where he was prohibited from being. Had he chosen another hiding spot, it likely would not have been a burglary. *See e.g., State v. Devitt*, 152 Wn. App. 907, 218 P.3d 647 (2009).

The Court should affirm defendant's conviction for burglary in the first degree.

2. THERE WAS SUFFICIENT EVIDENCE FROM WHICH A RATIONAL TRIER OF FACT COULD HAVE FOUND THE ESSENTIAL ELEMENTS OF ASSAULT IN THE FIRST DEGREE BEYOND A REASONABLE DOUBT.

To convict defendant of assault in the first degree, the State proved that defendant, with intent to inflict great bodily harm, assaulted another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm. RCW 9A.36.011(1)(a). A person acts with intent when he acts with the objective or purpose to accomplish a result which constitutes a crime. RCW 9A.08.010. Intent is to be gathered from all the circumstances of the case. *State v. Shelton*, 71 Wn.2d 838, 839, 431 P.2d 201 (1967). The court may infer the specific criminal intent of the accused from conduct that plainly indicated such intent as a matter of logical probability. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

When a defendant fires his weapon at a victim, this is sufficient to justify a finding of intent to kill. *State v. Hoffman*, 116 Wn.2d 51, 84-85, 804 P.2d 577 (1991). The intent to kill encompasses the intent to inflict great bodily harm so it follows that *if a defendant fires his weapon at a victim*, it is reasonable to infer that defendant intended to inflict great

bodily harm. *State v. Mann*, 157 Wn. App. 428, 39, 237 P.3d 966 (2010) (emphasis added).

In *Mann*, the Court found that the State had presented sufficient evidence of intent to inflict great bodily harm because the defendant had fired his gun at a pursuing deputy. *Id.* at 439-440. Two bullet casings were found at the scene, a bullet was recovered from a mattress near where the deputy had taken cover, and the trajectory of the bullet was horizontal, showing that defendant had fired his weapon in the deputy's direction. *Id.*

In the present case, Lahmann testified that defendant pointed a gun at him, threatened to kill him if he did not stop following him, and then fired the gun. 4 RP 208-209. Lahmann continued to follow defendant and defendant fired more shots at him. 4 RP 211. Defendant specifically turned around and fired in Lahmann's direction. 4 RP 222. Lahmann's testimony was corroborated by multiple witnesses: Smith, who saw the defendant raise the gun and fire a round at Lahmann (3 RP 117-118); Rowe, who saw the defendant shooting at Lahmann (3 RP 144); Tegge, who saw defendant turn around and shoot at Lahmann twice (4 RP 182); and Harrington who saw defendant turn and fire multiple shots at Lahmann twice (3 RP 159). A bullet casing was located on the street and was confirmed to have been fired by the pistol located where defendant was apprehended. 5 RP 326, 5 RP 393. A bullet hole was located in a van at the scene. 3 RP 134. These facts are similar to *Mann* and show that

defendant fired his gun at Lahmann multiple times, which sufficiently evidences defendant's intent to inflict great bodily harm.

All of the witnesses testified that *defendant was shooting at Lahmann*; none testified that he was shooting into the air or into the ground, but that he was holding the gun horizontally and aiming at Lahmann as he fired. The bullet hole in the van shows that these shots were fired horizontally at Lahmann. As the evidence shows defendant fired multiple shots at Lahmann during Lahmann's pursuit of defendant, there is sufficient evidence of defendant's intent to commit great bodily harm.

The Court should affirm defendant's conviction for assault in the first degree as defendant fired multiple shots at Lahmann.

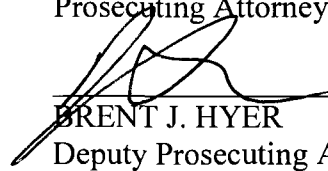
D. CONCLUSION.

The Court should uphold defendant's convictions for burglary in the first degree and assault in the first degree. There was sufficient evidence that defendant unlawfully entered Thompson's home with the intent to commit a crime. There was also sufficient evidence that defendant intended to commit great bodily harm when he aimed and fired

at Lahmann multiple times. The Court should affirm both of these convictions.

DATED: November 16, 2015.

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Certificate of Service:

The undersigned certifies that on this day she delivered by ^{ufile}~~U.S. mail~~ or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

11/16/15 (Johnson)
Date Signature

PIERCE COUNTY PROSECUTOR

November 16, 2015 - 11:47 AM

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