

73624-8

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Nº. 73624-8-I

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

STATE OF WASHINGTON
Respondent,

v.

JASON SCHWIESOW,
Appellant.

OPENING BRIEF OF APPELLANT

Appeal from the Superior Court of King County,
Cause No. 14-1-02258-6
The Honorable Thomas J. Wynne, Presiding Judge

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COURT OF APPEALS
STATE OF WASHINGTON

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A. ASSIGNMENT OF ERROR

The State presented insufficient evidence to convict Mr. Schwiesow of interference with domestic violence reporting.

B. ISSUE PRESENTED

Did the State present sufficient evidence to convict Mr. Schwiesow of interference with domestic violence reporting where the State presented no evidence indicating that Mr. Schwiesow destroyed Ms. Zumbroich's phone while she was calling 911 or seeking medical aid?

C. STATEMENT OF THE CASE

Factual and Procedural Background

On October 4, 2014, Ms. Angelica Zumbroich ended her relationship with Mr. Jason Schwiesow.¹ The couple had been living together in a single-family house.² Mr. Schwiesow moved out that day and on October 7 or 8, 2014, he was removed from the lease on the home.³

On October 10, 2014, Mr. Schwiesow returned to the home to retrieve his belongings.⁴ Mr. Schwiesow called Ms. Zumbroich to inform her that he was retrieving his belongings.⁵ Mr. Schwiesow was angry on the phone and hung up on Ms. Zumbroich, so Ms. Zumbroich went to the home to make sure nothing happened.⁶

Ms. Zumbroich and Mr. Schwiesow got into an argument and Ms. Zumbroich slapped Mr. Schwiesow in his face.⁷ Mr. Schwiesow slapped Ms. Zumbroich in her face then began punching her in her head.⁸ Ms. Zumbroich went to the ground but Mr.

¹ RP 40-42.

² RP 40-42.

³ RP 43-44.

⁴ RP 44.

⁵ RP 44.

⁶ RP 44.

⁷ RP 45-47.

⁸ RP 48.

Schwiesow wrapped his arm around her neck and continued punching her in the side of her head.⁹ As Ms. Zumbroich went to the ground, she dropped her purse and her cell phone fell out of her purse.¹⁰ Ms. Zumbrioch reached for her cell phone but Mr. Schwiesow grabbed the phone and threw it against the wall, breaking it.¹¹

When Mr. Schwiesow threw the phone, Ms. Zumbroich got off the ground and ran to a neighbor's house where the neighbor called the police.¹² Mr. Schwiesow drove away while Ms. Zumbroich was at the neighbor's house.¹³

Ms. Zumbroich was taken to the hospital where it was determined that the hand she had used to protect her head was broken.¹⁴

On November 10, 2014, Mr. Schwiesow was charge with second-degree assault in violation of RCW 9A.36.021(1)(a) and interfering with domestic violence reporting in violation of RCW 9A.36.150, both charges with a domestic violence allegation.¹⁵ An Amended Information was filed on May 11, 2015, that dropped the domestic violence allegation from the interference with domestic violence reporting charge.¹⁶

Mr. Schwiesow's trial began on May 11, 2015.¹⁷

The jury found Mr. Scwiesow guilty of both charges.¹⁸

Notice of appeal was filed on June 22, 2015.¹⁹

⁹ RP 48.

¹⁰ RP 49.

¹¹ RP 50.

¹² RP 51-53.

¹³ RP 54.

¹⁴ RP 56-57, 98.

¹⁵ CP 176.

¹⁶ CP 163.

¹⁷ RP 30.

¹⁸ CP 71, 74.

D. ARGUMENT

The State presented insufficient evidence to prove Mr. Schwiesow destroyed Ms. Zumbroich’s phone while she was using it to report an act of domestic violence.

When the sufficiency of the evidence to convict the defendant of a crime is challenged on appeal, the appellate court reviews the evidence in the light most favorable to the State and determines whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt.²⁰ “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.”²¹ If there is insufficient evidence to prove an element, reversal is required and retrial is “unequivocally prohibited.”²²

Mr. Schwiesow was charged with one count of interfering with domestic violence reporting in violation of RCW 9A.36.150.²³ RCW 9A.36.150 provides, in pertinent part,

(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.

(2) Commission of a crime of domestic violence under subsection (1) of this section is a necessary element of the crime of interfering with the

¹⁹ CP 17.

²⁰ *State v. Hernandez*, 120 Wn.App. 389, 391-392, 85 P.3d 398 (2004), citing *State v. Tilton*, 149 Wn.2d 775, 786, 72 P.3d 735 (2003).

²¹ *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

²² *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998).

²³ CP163.

reporting of domestic violence.

RCW 10.99.020(5)(b) includes second-degree assault in the definition of a crime of domestic violence when it is committed by one household member against another. RCW 10.99.020(3) defines “household members: as including “adult persons who are presently residing together or who have resided together in the past.”

The facts introduced at trial established that Ms. Zumbroich’s telephone, along with all the other contents of her purse, fell out of her purse when she fell to the ground, that she reached towards the contents of her purse, and that Mr. Schwiesow immediately grabbed the phone and threw it against the wall.²⁴

No evidence was introduced indicating that Mr. Schwiesow interfered with Ms. Ms. Zumbroich “calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official.” Rather, before Ms. Zumbroich even had the phone in her hand, Mr. Schwiesow picked it up threw it against the wall. Mr. Schwiesow’s conduct is a criminal act, most likely malicious mischief in the third degree,²⁵ but since the phone was not being used to call police, medical aid, or to report an act of domestic violence, the conduct does not violate RCW 9A.36.150.

Even viewed in the light most favorable to the State, the evidence introduced at trial does not establish that Mr. Schwiesow’s actions constituted the crime of interference with reporting of domestic violence.

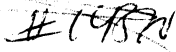
E. CONCLUSION

For the reason’s stated above, this court should vacate Mr. Schwiesow’s conviction for interfering with domestic violence reporting and remand for dismissal of

the charge with prejudice.

DATED this 14th day of December 2015.

Respectfully submitted,


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²⁴ RP 49, 144.

²⁵ RCW 9A.48.080.