

April 24, 2018

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM TODD HINZMAN,

Appellant.

No. 48494-3-II

UNPUBLISHED OPINION

LEE, J. – William Todd Hinzman appeals his two convictions for second degree assault and his two convictions for third degree assault. All convictions involve police officers responding to a domestic dispute between Hinzman and his estranged wife, Sarah Hinzman. Hinzman argues that there is insufficient evidence to support his convictions because the State failed to prove there was an actual assault. We affirm.

**FACTS**

Sarah<sup>1</sup> lived with her sister, Connie Cothren, in Kelso. In October 2015, Hinzman came to Cothren's home and began to argue with Sarah. He then began to argue with Cothren. Cothren called the police.

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<sup>1</sup> Because William and Sarah share the same last name, we use Sarah's first name for clarity. We intend no disrespect.

When Kelso police officers Kurt Wiper and Douglas Lane arrived, Cothren was physically shaking and upset. Cothren told the officers she wanted Hinzman out of her house. Officer Wiper instructed Hinzman to step outside.

Hinzman was agitated, sweating, fidgety, wide-eyed, and his speech was excited and erratic. He did not exit the home as instructed, so the police escorted Hinzman out of the house. As they exited the house, Hinzman clenched his hands into fists. Officer Lane instructed Hinzman to sit on a step outside. Hinzman replied, "I'm not your f\*\*\*ing dog." 4 Verbatim Report of Proceedings (VRP) (Dec. 11, 2015) at 323 (jury trial). Hinzman was focused on Officer Lane and continued to clench his fists. Officer Lane instructed Hinzman to sit for a second time. Hinzman replied, "F\*\*\* you, Lane." 2 VRP (Dec. 10, 2015) at 209 (jury trial). Officer Lane then told Hinzman he was under arrest.

As Officer Lane attempted to handcuff Hinzman, Hinzman pulled away and spun to the right. Each officer then took one of Hinzman's arms. Officer Wiper attempted to push Hinzman to a wall so he could handcuff him. Hinzman was very strong and struggled violently. Hinzman pulled his arm away from Officer Wiper, causing Officer Wiper to lose control of his handcuffs.

Hinzman then kicked Officer Lane multiple times in the right knee and shin. The officers attempted to control Hinzman, but Hinzman "violently resist[ed]," continuing to twist and kick the officers. 2 VRP (Dec. 10, 2015) at 213 (jury trial).

Hinzman grabbed Officer Wiper's wrist and pulled it. Because Hinzman had taken control of Officer Wiper's arm, Officer Wiper was concerned he would not be able to protect his firearm. Officer Wiper was able to get his wrist out of Hinzman's grasp and deploy his taser. The use of the taser angered Hinzman more. Hinzman "fought more violently" against the officers. 2 VRP (Dec. 10, 2015) at 217 (jury trial).

Hinzman and the officers fell to the ground during the struggle. Hinzman attempted to kick Officer Lane off of him. Hinzman kicked Officer Lane in the shin, knee, pelvis area, and collarbone. Hinzman then grabbed the taser out of Officer Wiper's hand and pointed it at Officer Wiper. Officer Wiper was able to grab the taser back. The taser was activated and shocked Officer Wiper as he grabbed it back.

Officer Lane then deployed his taser on Hinzman. Hinzman went down but was able to roll to his back and reach for Officer Lane's holster. Hinzman pulled down the lower half of Officer Lane's holster. Wiper then employed three knee strikes to Hinzman, which subdued Hinzman enough so that the officers could handcuff him.

Kelso Police Department Captain Darr Kirk arrived on the scene. Hinzman told Captain Kirk, "[Y]ou're lucky you came, Captain, or I would have kicked their a\*\*es." 3 VRP (Dec. 10, 2015) at 272 (jury trial).

As a result of the incident, Officer Lane suffered a torn medial meniscus of his right knee. He needed surgery to repair the damage to his knee. Officer Lane had limited mobility, was unable to work patrol, and was placed on light duty.

The State charged Hinzman with two counts of second degree assault, two counts of third degree assault, two counts of disarming a law enforcement officer, and resisting arrest. The jury found Hinzman guilty of all four assault charges and resisting arrest.<sup>2</sup> The jury found Hinzman not guilty of one of the counts of disarming a law enforcement officer and could not reach a verdict on the other disarming count. Hinzman appeals.

#### ANALYSIS

Hinzman argues that there is insufficient evidence to support his four assault convictions because the State failed to prove Hinzman intentionally assaulted Officers Lane and Wiper. We disagree.

##### A. STANDARD OF REVIEW

In a criminal case, the State must present sufficient evidence to prove each element of the charged offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). In reviewing whether sufficient evidence supports a conviction, we view the evidence in the light most favorable to the State and determine whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt. *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009). Circumstantial evidence receives the same weight as direct evidence. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). Appellate courts defer

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<sup>2</sup> Hinzman does not challenge his conviction for resisting arrest.

to the fact finder on the resolution of conflicting testimony, credibility determinations, and the persuasiveness of the evidence. *State v. Andy*, 182 Wn.2d 294, 303, 340 P.3d 840 (2014).

B. SUFFICIENCY OF THE EVIDENCE

The jury found Hinzman guilty of two counts of second degree assault. The jury also found Hinzman guilty of two counts of third degree assault.

A person is guilty of second degree assault if he or she, under circumstances not amounting to assault in the first degree, “intentionally assaults another and thereby recklessly inflicts substantial bodily harm” or “with intent to commit a felony, assaults another.” RCW 9A.36.021(1)(a) and (e). Disarming a law enforcement officer is a felony. RCW 9A.76.023(2).

The State charged Hinzman with second degree assault based on an intentional assault and reckless infliction of substantial bodily harm relating to Officer Lane. The State charged Hinzman with second degree assault based on an intentional assault with intent to commit a felony relating to Officer Wiper.

A person commits third degree assault if he or she “[a]ssaults a law enforcement officer . . . who was performing his or her official duties at the time of the assault.” RCW 9A.36.031(1)(g). The State charged Hinzman with two counts of third degree assault relating to both Officers Lane and Wiper.

Hinzman contends the State did not establish that there was an assault to support any of the assault convictions. Because the criminal code does not define “assault,” Washington courts define assault in one of three ways: “(1) an attempt, with unlawful force, to inflict bodily injury upon another; (2) an unlawful touching with criminal intent; and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is incapable of inflicting that harm.” *State v. Stevens*, 158 Wn.2d 304, 311, 143 P.3d 817 (2006).

Here, as Officers Lane and Wiper escorted Hinzman out of the house, Hinzman clenched his hands into fists. Officer Lane instructed Hinzman to sit on a step outside. Hinzman replied, “I’m not your f\*\*\*ing dog.” 4 VRP (Dec. 11, 2015) at 323 (jury trial). Hinzman was focused on Officer Lane and continued to clench his fists. Officer Lane instructed Hinzman to sit for a second time. Hinzman replied, “F\*\*\* you, Lane.” 2 VRP (Dec. 10, 2015) at 209 (jury trial). Officer Lane then told Hinzman he was under arrest. As Officer Lane attempted to handcuff Hinzman, Hinzman pulled away and spun to the right. Each officer then took one of Hinzman’s arms.

Officer Wiper attempted to push Hinzman to the wall so he could handcuff him. Hinzman was very strong and struggled violently. Hinzman pulled his arm away from Officer Wiper, causing Officer Wiper to lose control of his handcuffs. Hinzman then kicked Officer Lane multiple times in the right knee and shin. The officers attempted to control Hinzman. Hinzman “violently resist[ed],” continuing to twist and kick the officers. 2 VRP (Dec. 10, 2015) at 213 (jury trial).

Hinzman grabbed Officer Wiper's wrist and pulled it. Because Hinzman had taken control of Officer Wiper's arm, Officer Wiper was concerned he would not be able to protect his firearm. Officer Wiper was able to get his wrist out of Hinzman's grasp and deploy his taser, but the use of the taser angered Hinzman more. Hinzman "fought more violently" against the officers. 2 VRP (Dec. 10, 2015) at 217 (jury trial).

On the ground, Hinzman attempted to kick Officer Lane off of him. Hinzman kicked Officer Lane in the shin, knee, pelvis area, and collarbone. Hinzman then grabbed the taser out of Officer Wiper's hand and pointed it at Officer Wiper. Officer Wiper was able to grab the taser back. The taser was activated and shocked Officer Wiper as he grabbed it back.

Officer Lane then deployed his taser on Hinzman. Hinzman went down but was able to roll to his back and reach for Officer Lane's holster. Hinzman pulled down the lower half of Officer Lane's holster. When Captain Kirk arrived on the scene, Hinzman told him, "[Y]ou're lucky you came, Captain, or I would have kicked their a\*\*es." 3 VRP (Dec. 10, 2015) at 272 (jury trial).

As a result of the incident, Officer Lane suffered a torn medial meniscus of his right knee. He needed surgery to repair the damage to his knee. Officer Lane had limited mobility, was unable to work patrol, and was placed on light duty.

Viewing the evidence in a light most favorable to the State, the evidence is sufficient to prove assault of both officers beyond a reasonable doubt. Hinzman attempted to intentionally inflict bodily injury on Officer Lane by kicking him multiple times and on Officer Wiper by grabbing his wrist, pulling it, and eventually grabbing the taser out of Officer Wiper's hands and

pointing it at Officer Wiper. Officer Lane suffered a torn medial meniscus in his right knee that required surgery. And Hinzman activated and shocked Officer Wiper with the taser. The evidence also amounted to an unlawful touching of the officers and putting them in apprehension of harm. The evidence is also sufficient for a rational fact finder to find beyond a reasonable doubt that Hinzman assaulted Officer Wiper in the course of disarming him by taking his taser.

Hinzman argues he only intended to resist arrest not to assault the officers. *State v. Craven*, 67 Wn. App. 921, 841 P.2d 774 (1992) is instructive. There, Craven challenged the sufficiency of the evidence supporting his assault conviction for kicking a police officer who was arresting him. After Craven was informed by police he was under arrest, two officers struggled to place Craven in handcuffs and all three of them fell to the ground. *Id.* at 923. As the officers struggled on the ground with Craven, a third officer observed that Craven’s legs were “flopping around and kicking.” *Id.* at 924. The officer knelt down on Craven’s legs to restrain him. *Id.*. The officer “caught one of [Craven’s] feet on the right side of [his] head” causing an abrasion behind his ear and nearly knocking his glasses off. *Id.* Taken in the light most favorable to the State, the court held that this evidence was sufficient to support an assault of the officer, stating that “[a] reasonable factfinder could conclude that Craven knew someone was trying to restrain his legs, and that he kicked with the intent to evade arrest *and also* [to] touch or strike that person.” *Id.* at 929 (emphasis added).

Similarly, here, Hinzman cannot avoid responsibility for assault just because the ultimate purpose may have been to avoid apprehension. Thus, when all reasonable inferences are drawn in favor of the State, there was sufficient evidence for the jury to find beyond a reasonable doubt that Hinzman was guilty of assault in the second degree against Officer Lane, assault in the second degree against Officer Wiper, and assault in the third degree against both officers.

C. APPELLATE COSTS

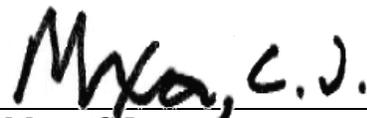
Hinzman asks that we decline to impose appellate costs if the State prevails on appeal. If the State makes a request for appellate costs, Hinzman may challenge that request before a commissioner of this court under RAP 14.2.

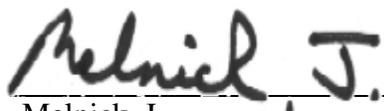
We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
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Lee, J.

We concur:

  
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Maxa, C.J.

  
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Melnick, J.