

63046-6

63046-6

NO. 63046-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

QUENTIN CAMPBELL,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LAURA GENE MIDDAUGH

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

JENNIFER S. ATCHISON
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

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JENNIFER S. ATCHISON
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A. ISSUES

1. Double jeopardy prohibits multiple convictions under the same statutory provision when the criminal act or acts comprise a single unit of prosecution. The unit of prosecution for second degree assault is the assaulting of another by a particular means. Here, Campbell was charged under two different provisions of the second degree assault statute stemming from two sequential, but separate criminal acts: choking his wife to near suffocation and threatening to kill his wife while pointing a gun at her. Has Campbell failed to show that his two assault convictions comprise the same unit of prosecution?

2. A defendant may not challenge the computation of his offender score for the first time on appeal when he affirmatively acknowledged his score at the sentencing hearing. A defendant also waives an offender score challenge based on a claim that two or more crimes constitute the “same criminal conduct” if he fails to raise the issue before the sentencing court. Here, Campbell affirmatively acknowledged his offender score at sentencing and did not argue that his two second degree assaults constituted the

same criminal conduct. The evidence at trial established that Campbell choked his wife several times and then later threatened to kill her with his gun. Has Campbell waived his challenge to his offender score? If not, has Campbell failed to demonstrate that his assault convictions constitute the same criminal conduct?

B. STATEMENT OF FACTS

1. PROCEDURAL FACTS

Quentin Campbell was convicted by a jury in count I of Assault in the Second Degree (deadly weapon), in count II of Felony Harassment and in count III of Assault in the Second Degree (strangulation). CP 8-10. The jury also found that Campbell was armed with a firearm during the commission of counts I and II, and that those offenses were committed in the presence of the victim's minor children. CP 24-27; 6RP. The court imposed an exceptional sentence of 74 months' incarceration (total), including the firearm enhancements and the 24 additional

months as a result of the aggravating factor.¹ CP 75-82, 119-21;
7RP 32.²

2. SUBSTANTIVE FACTS

Toma and Quentin Campbell³ met in Montana in 2000, where Campbell was stationed in the Air Force, and they married approximately a year later. 3RP 17-18; 4RP 86. Toma had an older son, B.S., from a previous marriage, who lived with them. 3RP 17, 19, 88. In 2001, Toma and Campbell had a son named J.C. 3RP 19. By the time the Campbell family moved to an Air Force base in Georgia in 2004, Campbell had become verbally and physically abusive toward Toma. 3RP 18-20, 63-65, 67. In March 2006, Toma and Campbell got into an argument in which

¹ The trial court stated that it was imposing an additional 24 months' confinement for the domestic violence aggravator, apparently believing that the enhancements on counts I and II were concurrent rather than consecutive. 7RP 32. However, because the court imposed 74 months in total, Campbell's exceptional sentence resulted in only an additional six months of confinement (74 months minus 54 months for the consecutive enhancements and minus 14 months for the high end of the standard range leaves six months of additional confinement).

² The Verbatim Report of Proceedings consists of seven volumes. The State has adopted the following reference system: 1RP (01/15/09), 2RP (01/20/09), 3RP (01/21/09), 4RP (02/22/09), 5RP (01/27/09), 6RP (01/28/09), and 7RP (02/13/09).

³ For clarity, the State will refer to Mrs. Campbell by her first name and Quentin Campbell by his last name. No disrespect is intended.

Campbell tackled Toma and started choking her. 3RP 21-24. As he tackled Toma, Campbell told her that she was a bad wife and needed to be more submissive. 3RP 22. Toma was six months' pregnant with their daughter, M.C., at the time. 3RP 21. While choking Toma, Campbell said that he was going to "make [her] puke up the baby." 3RP 23. A month later, Campbell and Toma had another argument where Campbell threatened to "beat [her] till white meat was showing" and said that he was going to kill her. 3RP 25-27. Less than two weeks later, Toma and her two sons moved to Federal Way, where Toma's mother lived. 3RP 29. Toma gave birth to her daughter shortly thereafter. 3RP 29. For the next year, Toma and Campbell often talked over the phone. 3RP 30-31. Despite what had happened, Toma still wanted to reconcile with Campbell. 3RP 30-31. Campbell agreed and moved from Georgia to Federal Way in August 2007. 3RP 32.

The marriage did not improve and the Campbells continued to argue about money, parental responsibilities, and the other women Campbell was socializing with. 3RP 32-39, 63-67, 71, 77. On May 21, 2008, Toma had had enough and took Campbell's car and house keys while he was asleep. 3RP 38. When Campbell awoke the following morning, he asked about the keys and Toma

told him that she wanted him to move out. 3RP 39, 71. Campbell became very angry, and told Toma that she was not a supportive wife and not submissive enough. 3RP 39-40. Campbell and Toma yelled at each other across the dining room table until Toma left to retrieve their daughter's pacifier from the master bedroom. 3RP 42. Campbell followed Toma into their bedroom. 3RP 42. When Toma sat down on the bed with M.C., Campbell put his hand over Toma's mouth and a struggle ensued. 3RP 42-44. Toma ended up on the floor with Campbell on top of her. 3RP 43. Campbell turned Toma's head to the left as he pushed her upper body into the floor, causing her neck and jaw to hurt. 3RP 44-45, 92-93. Campbell smothered Toma, making it difficult for her to breathe. 3RP 44, 117; 4RP 14. Toma testified that this happened approximately five times. 3RP 44, 117; 4RP 14.

B.S. then entered the bedroom, and saw Campbell suffocating his mother.⁴ 3RP 93. He testified that he thought Campbell was going to snap his mother's neck. 3RP 90-93. B.S. begged Campbell to stop, to which Campbell replied: "Don't worry. I'm not going to hurt your mom." 3RP 45, 94. Suddenly, Campbell

⁴ J.C. was at school at the time of the assault. 3RP 38, 88-91.

stopped, stood up, and allowed Toma to get back onto the bed with their daughter, who was crying. 3RP 45-46, 94. Campbell then went over to the closet where he kept his gun, retrieved it from the top of the closet, and closed the bedroom door. 3RP 46-47, 95, 97.

Campbell cocked the revolver and pointed it at Toma's face, chest and between her legs, pushing the barrel of the gun against her skin. 3RP 48, 95-96. When Campbell first pointed the gun at Toma, he called her derogatory names. 3RP 46, 96. Campbell then told Toma that he was going to make her a mercy killing for God, and put 18 bullets in her head because she was not a submissive wife. 3RP 46, 48, 52. Toma, who was in fear, started screaming that she was going to call the police. 3RP 47, 96-97. Campbell instructed B.S. to tell his mom to stop screaming or he would shoot her. 3RP 48, 96-97. B.S., who was "scared out of his mind," did as Campbell ordered. 3RP 97-98. Campbell further threatened to kill Toma and B.S. if she told anyone about what he had done. 3RP 52-54, 96, 100. To get him to stop, Toma promised not to say anything to anyone. 3RP 52-54, 96, 100.

Campbell got dressed, demanded that Toma give him the car keys, and left the apartment. 3RP 53, 99. Campbell's attack lasted somewhere between 30 to 60 minutes. 3RP 53, 98.

Since Toma and B.S. were too scared to call the police, Toma called her mother's neighbor, Pattie Schaak, who lived in the same apartment complex. 3RP 55, 100, 110-11. When Schaak arrived at Toma's apartment a few minutes later, Toma was crying hysterically and shaking. 3RP 111-12. Toma told Schaak that Campbell had put a gun to her head and then between her legs. 3RP 112. Schaak told Toma to grab a diaper bag and her purse because they were leaving. 3RP 112-13. Schaak initially drove the family to her church where she was advised to take them to the police station. 3RP 115-16. During the 15 minute drive from her apartment to the police station, Toma told Schaak that in addition to pointing a gun at her, Campbell had choked her, causing her to "see stars." 3RP 117. At the Federal Way Police station, Toma provided a detailed statement to an officer, after which she was examined by a firefighter/emergency medical technician ("EMT"). 3RP 58-59, 129-33; 4RP 9-18.

A few days after the assaults, Toma asked her mother to retrieve some clothing for her from the apartment. 3RP 60; 4RP 83. While pulling clothing out of the master bedroom closet, Toma's mother found, amongst Campbell's clothes, a photo ID and credit cards belonging to Campbell, a box containing .38 caliber

ammunition, and a manual for a handgun. 4RP 84-87, 98. Almost three weeks after the assaults, Campbell was stopped by the police while driving Toma's car. 4RP 26-27, 31-32, 39. Campbell was arrested and the car was searched. 4RP 28, 32, 40. In the glove box, one of the officers found a fully loaded .38 caliber black revolver, which Toma later identified at trial as the gun Campbell pointed at her during the second assault in May 2008. 3RP 50-51; 4RP 43-44.

C. ARGUMENT

1. CAMPBELL'S TWO SECOND DEGREE ASSAULT CONVICTIONS DO NOT COMPRISE THE SAME UNIT OF PROSECUTION.

Campbell asserts that his assault convictions violate double jeopardy because the two assaults on his wife were a single course of conduct that comprised a single unit of prosecution. Specifically, Campbell argues that because there is ambiguity about what the legislature intended as the unit of prosecution for second degree assault, the rule of lenity dictates that his two assault convictions be treated as a single unit. This argument should be rejected for two reasons: 1) the legislature clearly identified as separate units of prosecution an assault with a deadly weapon and an assault by

strangulation; and 2) the assaults did not stem from one continuing action, but from two separate acts with different criminal intents.

Double jeopardy protects a defendant from multiple convictions under the same statutory provision for committing just one criminal act (continuous or singular) or “unit of prosecution.” Const. Art. I, § 9; U.S. Const. Amend. V. The unit of prosecution is the legislatively defined scope of the criminal act. State v. Adel, 136 Wn.2d 629, 634, 965 P.2d 1072 (1998). To determine the unit of prosecution, a reviewing court first analyzes the plain meaning of the statutory language to ascertain its construction. Id. The court next reviews the legislative history. State v. Varnell, 162 Wn.2d 165, 168, 170 P.3d 24 (2007). If the legislature has failed to indicate the unit of prosecution, the statute is ambiguous and “the ambiguity should be construed in favor of lenity.” State v. Tili, 139 Wn.2d 107, 113, 985 P.2d 365 (1999), quoting Adel, 136 Wn.2d at 634-35. Finally, the court performs a factual analysis as to the unit of prosecution because the facts in a particular case may reveal that more than one unit of prosecution exists. Varnell, 162 Wn.2d at 168.

Here, Campbell was charged under two distinct alternative means with two counts of second degree assault for two separate

acts: causing physical harm to Toma by strangulation and causing Toma reasonable apprehension and imminent fear of death by threatening to kill her while pointing his gun at her.

The second degree assault statute states in pertinent part:

(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree:

(c) Assaults another with a deadly weapon; or

(g) Assaults another by strangulation.

RCW 9A.36.021. A firearm is a deadly weapon, whether loaded or unloaded. RCW 9A.04.110(6). Strangulation is defined as the compression of a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe. RCW 9A.04.110(26).

Contrary to Campbell's assertion, the plain meaning of the second degree assault statute is not ambiguous; it merely provides alternative means by which a person can commit that crime. Subsection (c) states that a person commits second degree assault whenever one assaults another with a deadly weapon. Thus,

assaulting another with a deadly weapon is the criminal activity measured by a single unit of prosecution. State v. Smith, 124 Wn. App. 417, 432, 102 P.3d 158 (2004), aff'd, 159 Wn.2d 778 (2007). Likewise, subsection (1)(g) states that a person commits second degree assault whenever one assaults another by strangulation. Thus, assaulting another by strangulation is the unit of prosecution. See id. Based on the statutory construction, assault by strangulation and assault with a deadly weapon are separate units of prosecution.

Campbell nonetheless relies on dicta from State v. Tili for the proposition that all acts occurring during the course of an assault are part of the same unit of prosecution. 139 Wn.2d at 116-17. Campbell's reliance is misplaced.

In Tili, the defendant asserted that his three rape convictions violated double jeopardy because they constituted one criminal act and therefore, also comprised one unit of prosecution. Id. at 112-13. Tili argued that if he could be convicted of three counts of rape based on three penetrations of the same victim, then a person could also be convicted of assault for each punch thrown in a fistfight without violating double jeopardy. Id. at 116. The court rejected Tili's analogy, stating that unlike the rape statute, "the

assault statute does not define the specific unit of prosecution in terms of each *physical* act against a victim” because assault, as defined by common law, encompasses many different acts, “some of which do not even require touching.” Id. at 116-17 (emphasis added). The Tili court simply observed that the unit of prosecution for assault is not defined by each physical act against another. The court did not state that sequential acts of assault can never comprise separate units of prosecution.

Furthermore, Campbell’s true complaint is that one assault occurred instead of two, which is really an argument that the assaultive acts constituted a continuing course of conduct. To determine whether criminal conduct constitutes one continuous act, an appellate court reviews the facts in a commonsense manner. State v. Handran, 113 Wn.2d 11, 17, 775 P.3d 453 (1989) (quoting State v. Petrich, 107 Wn.2d 566, 569, 683 P.3d 173 (1984)).

Here, Campbell’s assaults on Toma were separate and distinct. During the first assault, Campbell choked Toma several times to the point of restricting her ability to breathe. 3RP 43-45, 92-93. Campbell then stopped, allowing his wife to get off the floor and onto their bed while he turned his attention to retrieving his gun from the top of the closet. 3RP 46, 94. The second assault

occurred when Campbell cocked his gun, pointed it at several parts of Toma's body and told her that he was going to kill her. 3RP 46-48, 95-97. Because Campbell committed two separate acts of second degree assault and was convicted of violating two different statutory provisions, the two assault convictions do not constitute a single unit of prosecution. For the same reasons, these facts, when viewed in a commonsense manner, also support the conclusion that Campbell's two assaults on his wife were not a continuing course of conduct.

2. CAMPBELL'S TWO ASSAULT CONVICTIONS DO NOT CONSTITUTE THE SAME CRIMINAL CONDUCT.

Campbell argues that the trial court incorrectly calculated his offender score when it concluded that the two assaults did not constitute the same criminal conduct because the assault by strangulation and the assault with the deadly weapon were part of one continuing course of conduct that involved the same time, place, victim and objective intent. This argument is unpersuasive for three reasons. First, although Campbell successfully argued that the second degree assault with the deadly weapon and the felony harassment were the same criminal conduct, he did not

argue that his two second degree assault convictions constituted the same criminal conduct. Second, Campbell affirmatively acknowledged that the assaults scored against each other. Thus, Campbell waived any challenge to his offender score. Third, even if Campbell did not waive this claim, the two second degree assault convictions did not constitute the same criminal conduct because the assaults did not occur at the same time and the objective intent of each assault was different.

a. Relevant Facts.

At sentencing, Campbell asserted that his convictions for second degree assault with a deadly weapon and felony harassment constituted the same criminal conduct and that the felony harassment should not score against either assault conviction. 7RP 4-5, 24-26; Supp. CP __ (Sub No. 82, Defense Presentence Report).⁵ In his presentence report and again at the hearing, Campbell affirmatively acknowledged that he had an offender score of two for each assault conviction (due to the statutory multiplier⁶) and a score of one for the felony harassment

⁵ See Appendix A attached hereto.

⁶ RCW 9.94A.525(8).

conviction.⁶ Supp. CP __ (Sub No. 82); CP 112, 116; 7RP 5, 25-26. Campbell further asserted that with these scores his standard ranges were as follows: 12 months' and one day to 14 months' confinement on the second degree assault with a deadly weapon plus the 36 month firearm sentencing enhancement, for a total of 48 to 50 months; three to eight months' confinement on the felony harassment plus the 18 month sentencing enhancement, for a total of 21 to 26 months, and 12 months' and one day to 14 months' confinement on the assault by strangulation.⁷ 7RP 4-5, 25-26; Supp. CP __ (Sub No. 82).

The State agreed that the felony harassment and the assault with a deadly weapon were the same criminal conduct in relation to each other and therefore, did not score against each other, but argued that the felony harassment and the assault with a deadly weapon scored separately against the assault by strangulation, which would make Campbell's offender score a three for that count. 7RP 4-7. The State also asked the court to impose an exceptional sentence of 104 months' confinement based on the aggravating

⁶ Campbell did not have any prior felony convictions. CP 75-82, 117.

⁷ The State did not allege a firearm enhancement as to count III. CP 8-10; 7RP 28, 32, 34.

factor that the crimes had been committed in front of the minor children. CP 64-74; 7RP 8-11.

The court ruled that the second degree assault with a deadly weapon and the felony harassment were the same criminal conduct for all scoring purposes, and therefore, Campbell had an offender score of two on each assault count, and a score of one on the felony harassment. 7RP 27-28. The court imposed an exceptional sentence of 74 months on the assault with a deadly weapon,⁸ which included the firearm enhancement, based on the jury's finding that this was an aggravated domestic violence offense. 7RP 32; CP 75-82. Later, the prosecutor confirmed with the court that only the assault with the deadly weapon and the felony harassment counts were the same criminal conduct, and that the court had not found that the two second degree assaults were the same conduct, when the court agree, Campbell did not object. 7RP 43.

⁸ This count had the highest sentencing range. CP 112-16.

b. Campbell Waived His Claim That The Assault Convictions Constituted The Same Criminal Conduct By Affirmatively Acknowledging His Offender Score And Failing To Raise The Issue At Sentencing.

While a defendant has the right to challenge an offender score for the first time on appeal, the doctrine of waiver applies “where the alleged error involves an agreement to facts, later disputed, or where the alleged error involves a matter of trial court discretion.” In re Goodwin, 146 Wn.2d 861, 874, 50 P.3d 618 (2002). A same criminal conduct analysis involves both factual determinations and the exercise of discretion. State v. Nitsch, 100 Wn. App. 512, 523, 997 P.2d 1000, rev. denied, 141 Wn.2d 1030 (2000).

State v. Nitsch is controlling. In Nitsch, the defendant entered a plea to the crimes of Assault in the First Degree and Burglary in the First Degree. 100 Wn. App. at 517. Nitsch argued for the first time on appeal that the two crimes constituted the same criminal conduct, and therefore neither could be counted as part of his offender score for sentencing for the other crime. Id. This Court held that Nitsch waived any challenge to his offender score based on a same criminal conduct analysis for two reasons. First, Nitsch filed a presentence report wherein he affirmatively agreed

that his standard range to be 111-147 months on the assault and 26-34 months on the burglary—the correct standard range only if Nitsch’s offender score was two, consistent with the State’s calculation. Id. at 522. Second, Nitsch failed "to identify a factual dispute for the court's resolution and ... to request an exercise of the court's discretion" on the issue of whether his convictions encompassed the same criminal conduct. Id. at 520-21. This Court noted that "acknowledgment allows the judge to rely on unchallenged facts and information introduced for the purposes of sentencing." Id. at 520 (quoting State v. Ford, 137 Wn.2d 472, 482-83, 973 P.2d 452 (1999) (internal quotations omitted)); State v. Ross, 152 Wn.2d 220, 230, 95 P.3d 1225 (2004) (A defendant’s *affirmative acknowledgment* as to his offender score satisfies SRA requirements.) (emphasis in original).

Here, like Nitsch, Campbell filed a presentence report in which he affirmatively acknowledged an offender score of two on each count of second degree assault. Supp. CP __ (Sub No. 82). At the sentencing hearing, Campbell again asserted that he had an offender score of two during his oral argument that the second degree assault with a deadly weapon and the felony harassment constituted the same criminal conduct. 7RP 4-5, 25-26. At no time

during the hearing did Campbell argue that the two assault convictions constituted the same criminal conduct. 7RP 2-47. Therefore, contrary to Campbell's assertion, the court could not have abused its discretion when it did not exercise any regarding the two second degree assaults. Because Campbell affirmatively acknowledged his offender score in his presentence report and did not argue that the two assaults constituted the same criminal conduct at the sentencing hearing, he has waived any challenge to his offender score on that basis.

c. Campbell's Two Second Degree Assault Convictions Did Not Constitute The Same Criminal Conduct Because They Did Not Occur At The Same Time And Involved Separate Criminal Intents.

In determining a defendant's offender score under the Sentencing Reform Act ("SRA"), multiple prior offenses are presumptively counted separately, unless the trial court finds that the offenses encompass the same criminal conduct. RCW 9.94A.589(1)(a). Two crimes constitute the "same criminal conduct" only if the crimes (1) required the same criminal intent; (2) were committed at the same time and place; and (3) involved the same victim. Tili, 139 Wn.2d at 123; State v. Vike, 125 Wn.2d

407, 410, 885 P.2d 824 (1994); RCW 9.94A.589(1)(a). Courts narrowly construe the concept of same criminal conduct to disallow most assertions of it. State v. Grantham, 84 Wn. App. 854, 858, 932 P.2d 657 (1997). Failure to meet any one element precludes a finding of same criminal conduct, and the offenses must be counted separately in calculating the offender score. Vike, 125 Wn.2d at 410.

i. Campbell's objective intent changed between the two assaults.

In determining whether crimes shared the same criminal intent, courts evaluate two things: 1) whether a defendant's intent, viewed objectively, changed from one crime to the next; and 2) whether one crime furthered the other. State v. Dunaway, 109 Wn.2d 207, 215, 743 P.2d 1237, 749 P.2d 160 (1987); Grantham, 84 Wn. App. at 858. As part of this analysis, courts consider whether the crimes are "merely sequential, or whether they form a continuous, uninterrupted sequence of conduct." State v. Price, 103 Wn. App. 845, 858, 14 P.3d 841 (2000). Thus, unless the crimes are continuous, they are not the same course of

criminal conduct. Grantham, 84 Wn. App. at 858 (citing Dunaway, 109 Wn.2d at 215).

In State v. Tili, the Washington Supreme Court provided guidance in analyzing whether crimes share the same criminal intent. 139 Wn.2d 107. There, the court determined that the three counts of rape constituted the same criminal conduct. Id. at 124-25. Tili's three penetrations of the victim were nearly simultaneous, all occurring within two minutes. Id. at 111-12. The court focused on the "extremely short time frame coupled with Tili's *unchanging* pattern of conduct" and found it unlikely that Tili formed "an independent criminal intent between each separate penetration." Id. at 124 (emphasis added).⁹

In State v. Grantham, the defendant raped the same victim twice, at the same place, within minutes of each other. 84 Wn. App. at 859. Grantham forced anal intercourse on the victim, and then withdrew. Id. at 856. The victim crouched in a corner, while Grantham kicked her, called her names, and

⁹ See also State v. Taylor, 90 Wn. App. 312, 950 P.2d 526 (1998) (assault with a firearm and a kidnapping encompassed the same criminal conduct where crimes were against the same victim, occurred simultaneously, and Taylor's objective intent in committing the assault was to convince the victim not to resist the abduction).

threatened her not to tell anyone about the rape. Id. The victim begged him to stop and take her home. Id. At that point, Grantham forced her to perform oral sex upon him. Id.

In contrast to Tili, the Grantham court held that although the rapes occurred close in time, they constituted different criminal conduct for two reasons. First, Grantham "had the time and opportunity to pause, reflect, and either cease his criminal activity or proceed to commit a further criminal act." Id. at 859. Although the second rape had the same general objective intent as the first rape – sexual intercourse – the pause supported a finding that the second rape "was accompanied by a new objective intent." Id. Thus, the "crimes were sequential, not simultaneous or continuous." Id. Second, each sexual act "was complete in itself; one did not depend upon the other or further the other." Id.

Similarly, in State v. Price, the defendant shot the victim while he was standing by her car. 103 Wn. App. at 849. When the victim drove away, Price followed her onto the freeway and shot at her again. Id. at 849-50. In affirming the trial court's determination that the two attempted murder counts did not involve the same criminal intent, the appellate court stressed that each shooting was a complete criminal act in and of itself, the method of the attempted

murders changed, and, after the first shooting, Price returned to his car and made the choice to pursue the victim a second time. Id. at 858. This "allowed time for Price to form new criminal intent." Id.

Here, unlike Tilj, and similar to Grantham and Price, Campbell's assaults on his wife were sequential, not simultaneous or a single, continuous act. Campbell followed Toma into their bedroom, forced her onto the floor and choked her until he accomplished his intended result of restricting her ability to breathe. 3RP 42-44, 93, 117. After nearly suffocating his wife five times, Campbell suddenly stopped. 3RP 42-44, 93, 117. Hence, Campbell had completed the first assaultive act of strangulation. As Campbell went over to the closet to retrieve his gun, Toma took the opportunity to get off the floor and onto their bed, which provided Campbell with the time to reflect before committing another criminal act against his wife. 3RP 46, 94. Campbell then deliberately cocked the gun and pointed it at Toma's head, chest, and between her legs while telling Toma and B.S. that he was going to kill her if she didn't stop screaming or if Toma told anyone what happened. 3RP 46-48, 52, 95-98. Hence, Campbell completed his second assaultive act with a deadly weapon, where

he intended to cause Toma to have a reasonable fear and imminent apprehension of bodily injury or death.

As in Grantham, each of Campbell's assaults was complete in and of itself; one did not further the other. Similar to Price, the method of assault changed from one assault to the next and Campbell's pause between assaults allowed sufficient time for him to form a new criminal intent.

ii. The two assaults did not occur at the same time.

Although two crimes need not be simultaneous to meet the requirement that they take place at the same time, the crimes still must occur extremely close in time. State v. Porter, 133 Wn.2d 177, 183, 185-86, 942 P.2d 974 (1997). For example, in Porter, the defendant delivered two different kinds of drugs to the same police officer "as closely in time as they could without being simultaneous." Id. at 183. The court concluded that the "sales were part of a continuous, uninterrupted sequence of conduct over a very short period of time," and held that immediately sequential drug sales satisfy the "same time" element of the statute. Id.

By contrast, in Price, the Court of Appeals concluded that because the defendant had enough time after the first shooting to return to his truck, pursue the victims up an on-ramp, and pull up next to them on the freeway, there was no continuing, uninterrupted sequence of conduct. 103 Wn. App. at 856. Therefore, the crimes did not take place at the same time. Id.

Here, as discussed above, Campbell strangled Toma to near suffocation on the floor of their bedroom, stopped, and then got his gun down from the closet, pointed it at her and threatened to kill her. Although these events occurred during a 30 to 60 minute time frame in the couple's bedroom, Campbell's assaults on Toma were not simultaneous, nor part of a continuous, uninterrupted course of conduct. Rather, similar to Price, the assaults were two separate and distinct acts, divorced by Campbell's decision to cease the first assault in order to retrieve his gun and commit the second assault. This break in time gave Campbell ample opportunity to reflect and conceive the new intent to threaten his wife with the gun.

Because Campbell's two assaults on his wife required two different acts and intents, and occurred sequentially rather than simultaneously, they do not constitute the same criminal conduct.

D. CONCLUSION

For the foregoing reasons, the State respectfully requests that Campbell's convictions and sentence be affirmed.

DATED this 23rd day of December, 2009.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: Jennifer Satchison
JENNIFER S. ATCHISON, WSBA #33263
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

APPENDIX A

1
2 RECEIVED

3 2009 DEC 22 PM 12: 52

4 KING COUNTY
5 SUPERIOR COURT CLERK
6 SEATTLE, WA

7 IN KING COUNTY SUPERIOR COURT OF THE STATE OF WASHINGTON

8 STATE OF WASHINGTON

9 Plaintiff,

No. 08-1-04695-4 KNT

10 v.

DEFENSE PRESENTENCE REPORT

11 QUENTIN CAMPBELL,

12 Defendant.
13
14

15 Sentencing Judge: The Honorable Laura Gene Middaugh

16 Sentencing Date: February 13, 2009 at 11 am
17

18 I. STATEMENT OF THE CASE

19 Mr. Campbell is before the court for sentencing having been found guilty of three counts:
20 Count I Assault 2 – deadly weapon, Count II - Felony Harassment, and Count III Assault 2 -
21 strangulation. The jury also unanimously found that a firearm had been used in counts I and II
22 and that the offenses occurred in the presence of children. The defense submits that the Assault
23 2 with a deadly weapon and the Felony Harassment constitute the same criminal conduct for
24 sentencing purposes and thus Mr. Campbell's offender score is a 2. With a score of 2 Mr.
25

Defense Presentence report - 1

THE DEFENDER ASSOCIATION
420 West Harrison Street #202
Kent, WA 98032
(206)447-3900

1 Campbell faces a range of 12+-14 months for the Assault charges and 3-8 months for the Felony
2 Harassment charge. The Firearm Enhancement for a first time offender on an Assault 2, a class
3 B felony, is 36 months and on Felony Harassment, a class C felony is 18 months. The state
4 agrees that Mr. Campbell's standard range with enhancement is 48-50 months.
5
6
7

8 II. RECOMMENDATION

9 12 months confinement
10 36 months enhancement
11 Credit For Time Served, since booking on June 11, 2008
12 Waiver of non mandatory fees, costs and assessments
13

14 III. BASIS OF RECOMMEDATION

15 Mr. Campbell has no prior criminal history. This is the first time he has been involved
16 with the criminal justice system. The prosecutor mentioned he may seek an exceptional
17 sentence, although defense has not received any briefing at this time. In this case, that is
18 unnecessary to fulfill the three purposes of a sentencing, punishment, deterrence and
19 rehabilitation. Mr. Campbell is facing a minimum 4 year sentence, 36 months of which will be
20 straight time. The weapon enhancement alone adds the enough punishment for the crimes
21 involved here and this entire experience from arrest through serving a sentence will act as a
22 deterrent to Mr. Campbell ever wanting to risk involvement with the criminal justice system in
23 the future. The standard range is more than enough time for Mr. Campbell to avail himself to
24 whatever positive programming opportunities are offered at DOC, whether it is education,
25 therapeutic or vocational. Quite simply, no more prison time is justified for the presence of

1 children in this case. More prison time will not help Brendan Swartz or Meah Campbell move
2 forward any faster or more thoroughly than the standard range with a weapon enhancement will.

3 Mr. Campbell served his country in the United States Air Force from October 1998 to
4 November 2006. While serving, he earned an Air Force Good Conduct medal, a Longevity
5 Service award, and service medals for National Defense and Global War on Terrorism. He has
6 done good things in the past, and is now having to take responsibility for crimes he has been
7 found guilty of. Mr. Campbell will now have 4 years to figure out how he wants to live his life
8 when he rejoins society.

9
10 Mr. Campbell was screened by the Office of Public Defense and found eligible for a
11 public defender, accordingly he asks the court to waive all non-mandatory costs, fees and
12 assessments.

13 DATED this 12th day of February, 2009.

14 Respectfully submitted,

15 

16 Katy Wallace, WSBA #24695
17 Attorney for Quentin Campbell