

NO. 65613-9-I

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

REC'D
MAR 01 2011
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

O.F.,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY, JUVENILE
DIVISION

The Honorable Philip G. Hubbard, Jr., Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THE EVIDENCE IS INSUFFICIENT TO SUPPORT O.F.'S
DISORDERLY CONDUCT CONVICTION.

The State defends the trial court's interpretation of RCW 9A.84.030, arguing that it was simply required to prove that O.F. committed an intentional act that happened to disrupt others. The State contends that O.F.'s interpretation (1) is inconsistent with the statutory definition of intent and (2) reads into the statute language that is not there. See Brief of Respondent, at 6-7. The State is incorrect.

As pointed out in O.F.'s opening brief, "[a] person acts with intent or intentionally when he or she acts with the objective purpose to accomplish a result which constitutes a crime." RCW 9A.08.010(1)(a). Contrary to the State's argument, O.F. does not contend the State must prove he intended to commit a crime. But he must act with the intent producing the result that constitutes a crime. And here, that intent is an intent to disrupt an assembly or a meeting. See State v. Caliguri, 99 Wn.2d 501, 506, 664 P.2d 466 (1983) ("Intent' exists only if a known or expected result is also the actor's 'objective or purpose.'"); see also State v. Allen, 67 Wn. App. 824, 826, 840 P.2d 905 (1992) ("If the definition of a crime

includes a particular result as well as an act, the mental element relates to the result as well as to the act.”), overruled on other grounds, State v. Brown, 140 Wn.2d 456, 998 P.2d 321 (2000).

The State also claims that O.F. is attempting to rewrite the disorderly conduct statute. According to the State, had the Legislature intended to require proof of an intent to disrupt, it would have used the phrase “intent to disrupt” rather than “intentionally disrupts.” Brief of Respondent, at 7. It then provides two examples of such language – one from the theft statutes and one from the assault statutes. Id.

The State’s argument simply demonstrates there is more than one approach to requiring a specific intent. The Revised Code of Washington is filled with statutes – like the disorderly conduct statute – where the Legislature has employed the word “intentionally” to require the intent to produce a particular result. See, e.g., RCW 9.46.195 (“No person shall intentionally obstruct or attempt to obstruct a public servant”); RCW 9.47A.020 (“It is unlawful for any person to intentionally smell or inhale the fumes of any type of substance . . . for the purpose of causing . . . symptoms of intoxication, elation, [etc.]”); RCW 9.68A.075(1) (“A person who intentionally views over the internet visual or printed matter

depicting a minor engaged in sexually explicit conduct . . . is guilty of viewing depictions of a minor engaged in sexually explicit conduct”); RCW 9.91.170(5) (“Any person who intentionally injures, disables, or causes the death of a dog guide or service animal is guilty of a class C felony”); RCW 9A.36.021(1)(a) (one who “[i]ntentionally assaults another and thereby recklessly inflicts substantial bodily harm” is guilty of assault in the second degree); RCW 9A.56.070(1) (“A person is guilty of taking a motor vehicle without permission . . . if he or she, without the permission of the owner . . . intentionally takes or drives away an automobile or motor vehicle . . . that is the property of another”); RCW 9A.64.010(1) (“A person is guilty of bigamy if he intentionally marries or purports to marry another person when either person has a living spouse.”); RCW 9A.76.040(1) (“A person is guilty of resisting arrest if he intentionally prevents or attempts to prevent a peace officer from lawfully arresting him.”).

Using some of the above examples – and under the trial court’s and State’s interpretation of the word “intentionally” – an individual would be guilty of a criminal offense if he engaged in any intentional act that happened to obstruct a public servant, happened to result in seeing minors engaged in sexually explicit

conduct, happened to cause the death of a service animal, or happened to result in prevention of the individual's arrest. Under the State's interpretation, whenever the Legislature uses the word "intentionally," the intentional act is completely divorced from the result. This is contrary to the plain language of these statutes and the statutory definition of "intentionally."

As discussed in the opening brief, the trial court's interpretation of RCW 9A.84.030(1)(b) would criminalize any intentional act that happened to disrupt a classroom, including chewing gum, "visiting" with other students, and getting up to use the restroom. See Brief of Appellant, at 6-7. In response, the State does not dispute this. Rather, it simply points out that these scenarios are not at issue in O.F.'s case. Brief of Respondent, at 9-10. The Legislature could not, and did not, intend this absurd result, which would lead to dozens of arrests for disruptive behavior in every school every day. See also State v. Seek, 109 Wn. App. 876, 882, 37 P.3d 339 (2002) (rejecting State's narrow interpretation of "intentionally marries" in bigamy statute because it could lead to absurd results).

Finally, the State argues that even if the trial court misinterpreted the requirements of the disorderly conduct statute,

the evidence is sufficient to demonstrate that O.F. specifically intended to disrupt a meeting or assembly. For the reasons discussed in O.F.'s opening brief, this is incorrect. The State failed to present any proof that O.F. acted with that intent. This was a typical schoolboy scrap, nothing more, and the evidence reveals that O.F.'s only intent was to best his opponent. See Brief of Appellant, at 7-8.

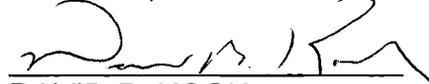
B. CONCLUSION

For the reasons discussed in O.F.'s opening brief and above, this Court should reverse his conviction and order dismissal of the case.

DATED this 15th day of March, 2011.

Respectfully submitted,

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DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 65613-9-1
)	
O.F.,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 1ST DAY OF MARCH, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

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SIGNED IN SEATTLE WASHINGTON, THIS 1ST DAY OF MARCH, 2011.

x *Patrick Mayovsky*