

NO. 65613-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

OSCAR FERNANDEZ-GARCIA,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE PHILIP G. HUBBARD

BRIEF OF RESPONDENT

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A. ISSUE

1. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. To prove disorderly conduct, the State must show that the defendant intentionally disrupted a lawful assembly. The State presented evidence that Fernandez-Garcia engaged in a fistfight in the school hallway and continued fighting, despite being told to stop and a crowd of students gathering around, resulting in class starting late. Is this sufficient evidence to demonstrate that Fernandez-Garcia intentionally disrupted a lawful assembly?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged Oscar Fernandez-Garcia and a co-Respondent, James Buhl, with Disorderly Conduct. CP 1. After a joint fact finding, the court convicted both juveniles as charged. CP 9-14; RP 13-14.¹ The trial court imposed no sanctions except

¹ The Verbatim Report of Proceedings consists of one volume, referred to herein as "RP."

for a \$75.00 fine and the mandatory \$75.00 victim penalty assessment. CP 17-22; RP 110.

2. SUBSTANTIVE FACTS

On September 29, 2009, students at Lake Washington High School headed to class and teachers prepared for first period before starting school for the day. RP 9-10, 38-39. Around 7:55 a.m., math teacher James Johnson was reviewing his lesson plans when he heard sounds of a fight 10 feet outside his classroom. CP 11; RP 10-11. Johnson left his classroom and found Fernandez-Garcia and Buhl "swinging punches" at each other's heads and 30 students gathering around to watch. RP 11-12, 28. Some students stopped to watch on their way to class while others left their classrooms to take in the action. CP 11; RP 40, 46. Both Johnson and another student intervened to stop the fight, but Fernandez-Garcia and Buhl continued undeterred as the crowd around them almost doubled in size. CP 11; RP 11, 13-14.

At their joint fact finding, Buhl testified that he got into a "fistfight" with Fernandez-Garcia and continued fighting with him even after being told to stop. CP 11; RP 72, 77-78. Buhl admitted

to knowing that fighting was against school rules and attracted students, and he also admitted to seeing students gather around them as they fought. CP 12; RP 77-78. The fight did not end until three teachers converged and managed to separate Fernandez-Garcia and Buhl. CP 11; RP 15-16. After the fight ended, students dispersed and Johnson headed back to his classroom where he started class late. CP 11-12; RP 16, 45.

Fernandez-Garcia and Buhl both moved to dismiss the disorderly conduct charges against them at the close of the State's case, arguing that the State had produced insufficient evidence of intent and a lawful assembly. RP 58-63. The court denied their motions, distinguishing the incident that occurred in the school hallway as students were heading to class from a fight occurring after school in the school parking lot. RP 65-66. The court noted that Fernandez-Garcia and Buhl "reengaged, repeatedly" as a crowd gathered around them, despite attempts to break them up. RP 66. The court found that attending class is a lawful assembly and that class started late because of the fight. RP 66.

C. ARGUMENT

1. SUFFICIENT EVIDENCE SUPPORTS FERNANDEZ-GARCIA'S DISORDERLY CONDUCT CONVICTION.

Fernandez-Garcia argues that the State produced insufficient evidence to find him guilty of intentionally disrupting a lawful assembly, and that the trial court erred by interpreting the disorderly conduct statute to require only “an intentional act that causes a disruption.” *App. Br.* at 6. Fernandez-Garcia contends that to prove disorderly conduct, the State must show that he acted with the specific intent to disrupt an assembly or meeting.

There are no Washington cases that address the intent required to commit disorderly conduct. Nonetheless, Fernandez-Garcia's argument fails because the State produced substantial evidence, under either the trial court's interpretation or his own suggested interpretation of intent, for a rational trier of fact to find that Fernandez-Garcia committed the offense of disorderly conduct.

A person is guilty of disorderly conduct if he intentionally disrupts a lawful assembly of persons without lawful authority. RCW 9A.84.030(1)(b). Evidence of intent may be inferred from the facts and circumstances surrounding the defendant's acts. See State v. Wilson, 125 Wn.2d 212, 217-18, 883 P.2d 320 (1994)

(inferring defendant intended to commit first degree assault when he shot at and wounded victims); State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980) (inferring defendant intended to commit theft when he went behind the store counter and crouched down in front of the cash drawer).

At trial, the State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that reasonably can be drawn therefrom." Id. at 201. Circumstantial and direct evidence are equally reliable. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000).

Fernandez-Garcia challenges the sufficiency of the State's evidence on the element of "intent" only. "A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime." RCW 9A.08.010(1)(a). The defendant "need not intend to commit

a crime - only to accomplish the *result* that constitutes a crime." 13A Seth A. Fine & Douglas J. Ende, Washington Practice: Criminal Law §103, at 1 (2d ed. Supp. 2008-09) (emphasis in original). Thus, to prove disorderly conduct, the State need not prove that Fernandez-Garcia intended to commit disorderly conduct, but instead that Fernandez-Garcia intended to continue fighting as a crowd of students grew around him and others tried to stop him, resulting in Johnson's class starting late.

Rather than interpreting the statutory language "[i]ntentionally disrupts" to require an intentional act that disrupts as the trial court did, Fernandez-Garcia interprets the language to require the State to prove that he acted "with the objective to disrupt." CP 12; RP 101; *App. Br.* at 6. Fernandez-Garcia's interpretation, however, asks this Court to read language into the statute that does not exist. See State v. Moses, 145 Wn.2d 370, 374, 37 P.3d 1216 (2002) (courts refrain from reading language into a statute that the Legislature has intentionally or inadvertently omitted). Fernandez-Garcia's interpretation also runs counter to the statutory definition of intent, which requires that the defendant act with the objective of accomplishing a *result* that constitutes a crime, not that the defendant act with the intent to commit a crime.

RCW 9A.08.010(1)(a); Christensen v. Ellsworth, 162 Wn.2d 365, 373, 173 P.3d 228 (2007) ("Statutory provisions and rules should be harmonized whenever possible.").

Moreover, if the Legislature had intended for the State to prove a defendant's specific "intent to disrupt," then the Legislature would have drafted the statute to require such specific intent as it has in other criminal statutes. Compare RCW 9A.56.020(1) (defining theft to require the "intent to deprive"), and RCW 9A.36.011(1) (defining assault in the first degree to require the "intent to inflict great bodily harm"), with RCW 9A.84.030(1)(b) (defining disorderly conduct as occurring when a person "[i]ntentionally disrupts"). Assuming that "the Legislature meant exactly what it said," the Court should reject Fernandez-Garcia's efforts to rewrite the disorderly conduct statute to require the specific "intent to disrupt" and give effect to the plain language of the statute, which requires only that the defendant intentionally disrupt a lawful assembly. Geschwind v. Flanagan, 121 Wn.2d 833, 841, 854 P.2d 1061 (1993).

Nonetheless, under either interpretation, the State produced sufficient evidence of the surrounding facts and circumstances for a rational trier of fact to conclude that Fernandez-Garcia committed

disorderly conduct. Math teacher James Johnson testified that prior to the fight he was reviewing lesson plans with his student teacher. RP 9-10. He abandoned those efforts when he learned that a fistfight was brewing outside his door and saw Fernandez-Garcia and co-Respondent Buhl "swinging punches" at each other's heads. CP 11; RP 11, 28.

Although Johnson and another student tried to break up the fight, Fernandez-Garcia and Buhl continued fighting as a crowd of at least 30 students circled around them, stopping to watch the fight instead of heading to class. CP 11-12; RP 11-13. As the fight continued, other students came out of their classrooms to watch and the crowd nearly doubled in size. CP 11; RP 13, 46.

Fernandez-Garcia "cocked back and swung" at Buhl, who admitted to continuing to fight with Fernandez-Garcia, despite being told by a teacher to stop, and despite knowing that fighting was not allowed at school and attracted crowds of students. CP 12; RP 42, 77-78.

The fight required three teachers to break it up and resulted in Johnson starting his class late. CP 11-12; RP 15-16.

Whether this Court interprets "intentionally disrupts" consistent with the trial court or as Fernandez-Garcia suggests, there is sufficient evidence to support Fernandez-Garcia's

disorderly conduct conviction. The surrounding facts and circumstances strongly support an inference that Fernandez-Garcia and Buhl intended to disrupt students heading to class and teachers preparing for first period by choosing to fight in the school hallway minutes before class, instead of off campus or outside after school, and by continuing to fight despite others' attempts to stop them and the crowd of students growing around them. The trial court found that the "only reasonable inference" that could be drawn from the timing and nature of the incident was "that it was intentionally disruptive." RP 100-01. This Court should not second-guess the trial court's sound judgment on the persuasiveness of the evidence or credibility of the witnesses. Fiser, 99 Wn. App. at 719.

Fernandez-Garcia's argument that interpreting the statute to require only an intentional act that disrupts criminalizes other innocent student behavior, such as chewing gum loudly, talking to classmate during a lecture, texting, or leaving class to use the bathroom, lacks merit. None of those scenarios resembles the facts presented here, where Fernandez-Garcia engaged in what Johnson called "violent contact" and continued engaging in such conduct, despite being told to stop and provoking a crowd of nearly

60 students to gather instead of heading to class, and at least one class starting late. RP 30.

Viewing the evidence in the light most favorable to the State and drawing all reasonable inferences therefrom, there is substantial evidence from which a rational trier of fact could conclude that Fernandez-Garcia possessed the requisite intent to commit disorderly conduct.

D. CONCLUSION

For the reasons stated above, the Court should affirm Fernandez-Garcia's conviction.

DATED this 3rd day of January, 2011.

Respectfully submitted,

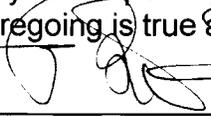
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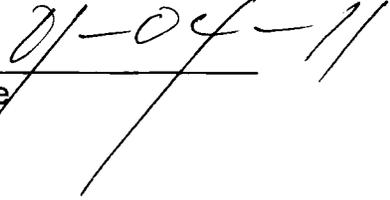
Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David Koch, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. OSCAR FERNANDEZ-GARCIA, Cause No. 65613-9-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name
Done in Seattle, Washington



Date

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