

NO. 65915-4-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JOHN DAVID NORDVALL,

Appellant.

FILED
COURT OF APPEALS
DIVISION ONE
JUN 20 2011

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL HEAVEY

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

CHRISTINA MIYAMASU
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
1. PROCEDURAL FACTS.....	1
2. SUBSTANTIVE FACTS	2
C. <u>ARGUMENT</u>	5
VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE AND DRAWING ALL INFERENCES IN THE STATE'S FAVOR, THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S GUILTY VERDICT	5
D. <u>CONCLUSION</u>	8

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Camarillo, 115 Wn.2d 60,
794 P.2d 850 (1990).....6

State v. Gerber, 28 Wn. App. 214,
622 P.2d 888, rev. denied,
95 Wn.2d 1021 (1981).....6

State v. Salinas, 119 Wn.2d 192,
829 P.2d 1068 (1992).....6

State v. Tilton, 149 Wn.2d 775,
72 P.3d 735 (2003).....6

State v. Walton, 64 Wn. App. 410,
824 P.2d 533, rev. denied,
119 Wn.2d 1011 (1992).....7

Statutes

Washington State:

RCW 9A.36.031.....6

A. ISSUES PRESENTED

Evidence is sufficient to support a conviction if, after reviewing it in a light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. By claiming the evidence is insufficient, the defendant admits the truth of the State's evidence and all inferences that can reasonably be drawn from it. Here, deputies made a hole through a wall to survey the room on the other side. Nordvall was the only person on the opposite side of the wall. As the deputies were completing the hole, they heard a "pop," saw a "spray of sheetrock," and Deputy Pacey felt something hit his bicep protector. As deputies retreated, they saw a small hole through the wall next to the hole they made that was the size of a shot from a pellet rifle. When deputies entered Nordvall's room, they found a high powered pellet rifle and loose pellets on the floor. Was there sufficient evidence to support the jury's guilty verdict?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

John David Nordvall was charged by Information in King County Superior Court with two counts of Felony Harassment and Assault in the Third Degree. CP 19-21. A jury acquitted Nordvall of

the Felony Harassment charges and convicted him of Assault in the Third Degree. CP 74-6. Nordvall appealed. CP 88-89.

2. SUBSTANTIVE FACTS

On September 8, 2009, King County Sheriff's deputies went to Nordvall's home after they were notified that there was probable cause to arrest him for threats. 2RP 7-8.¹ The deputies arrived in uniform at Nordvall's front door, knocked, identified themselves as police, and saw Nordvall peek his head out of two sets of windows near the front door. 2RP 11-2. The deputies told Nordvall they wanted to speak with him. 2RP 11. Nordvall responded: "This is private property. You're fucking trespassing. Get the fuck out of here." 2RP 14. Nordvall repeated this until the deputies walked away. 2RP 14. The deputies asked a superior to obtain a warrant and notify SWAT to assist in executing the warrant. 2RP 15.

Approximately one and a half hours later, the warrant had issued and SWAT had arrived. 2RP 16. Among the SWAT officers with a leadership role at the scene were Deputy Scott Click and Deputy Bryan Pacey. Deputy Click is a 22 year veteran with the King County Sheriff's Office and has been assigned to the SWAT team for the past 11 years. 2RP 21, 22. His primary assignment at

the time of this incident was to the shooting range with ancillary duties on the SWAT team and fugitive task force. 2RP 22. Deputy Click is part of the entry team and had dealt with hundreds of barricaded suspects. 2RP 23, 56. Deputy Pacey has been with the Sheriff's Office for 13 years and on the SWAT team for eight years. 2RP 92, 93. He is a trained coordinator for the SWAT team and facilitates trainings in areas such as firearms training. 2RP 92.

Upon arrival, SWAT deputies received information that Nordvall had been trying to get a gun from a neighbor earlier that day and that he possessed edged weapons in his home. 2RP 25. Over the next four hours, SWAT deputies attempted to communicate with Nordvall to gain his surrender, utilizing their public address system, a "throw phone," and calling out to him when they finally made their way into the hallway outside of his bedroom. 2RP 31, 34, 38-41, 55. Nordvall appeared at a window once but ignored deputies' calls out to him and retreated back into his bedroom. 2RP 48.

Knowing that Nordvall had set up a barricade against his bedroom door and that he may be armed, deputies decided to make a hole in the wall from the adjoining room to see what

¹ The State adopts the appellant's numbering of the Verbatim Report of

Nordvall was doing, where he was, and what kind of barricade he had constructed. 2RP 55. The deputies planned to make an eye level hole through the wall large enough to stand at about a six foot distance from the hole and survey Nordvall's bedroom on the other side. 2RP 56-9. Deputy Pacey made the hole while Deputies Click and Thomas covered him. 2RP 56. As Deputy Pacey was taking his final swing at the wall or shortly thereafter, there was a "pop" as deputies saw a "spray of sheetrock" and Deputy Pacey felt something hit his bicep protector. 2RP 57, 110. The deputies in the room thought that the pop was consistent with the sound of the discharge of a firearm. 2RP 60, 111-12. Deputy Pacey thought that it sounded like either a .22 caliber or other small caliber pistol. 2RP 111. The deputies backed out of the room and saw a smaller hole next to the hole that Deputy Pacey had made that was the same diameter as a pistol round. 2RP 111. None of the weapons that SWAT was using would have caused that hole. 2RP 119.

Deputies eventually entered Nordvall's bedroom. 2RP 70. Nordvall was the only person in the bedroom. 2RP 81, 120. Nordvall failed to comply with repeated commands to show his

hands. 2RP 71. After a brief struggle, the deputies took Nordvall into custody. 2RP 71.

In the bedroom where Nordvall was arrested, the deputies located a high powered pellet rifle. 2RP 72-3,117. A pellet rifle is more powerful than a BB gun and shoots a lead projectile shaped like a bullet. 2RP 82. Pellet rifles can fire at a velocity as high as a .22 caliber rifle and can penetrate skin, muscle, and dry wall. 2RP 82, 85. Deputies also found pellets for the rifle loose on Nordvall's bedroom floor. 2RP 118, 122. The smaller hole in the wall was consistent with the pellets. 2RP 121.

C. **ARGUMENT**

VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE AND DRAWING ALL INFERENCES IN THE STATE'S FAVOR, THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE JURY'S GUILTY VERDICT

Nordvall contends that there is insufficient evidence to support his conviction for Assault in the Third Degree.

In a prosecution for Assault in the Third Degree, the State must prove beyond a reasonable doubt that on a date certain (1) the defendant assaulted an officer; (2) that at the time of the assault, the officer was a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties;

and (3) the acts occurred in the State of Washington. RCW 9A.36.031.

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. State v. Tilton, 149 Wn.2d 775, 786, 72 P.3d 735 (2003); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). By claiming insufficiency of the evidence, a defendant admits the truth of the State's evidence and all inferences that reasonably can be drawn there from. Salinas, 119 Wn.2d at 201. All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Id.

Furthermore, when evidence is conflicting or is of such a character that reasonable minds may differ, it is the function and province of the jury to weigh the evidence, to determine the credibility of the witnesses, and to decide the disputed questions of fact. State v. Gerber, 28 Wn. App. 214, 216, 622 P.2d 888, rev. denied, 95 Wn.2d 1021 (1981). Credibility determinations are for the trier of fact and are not subject to appellate review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Deference must be given to the trier of fact on issues of conflicting testimony,

credibility of witnesses, and the persuasiveness of the evidence.

State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, rev. denied, 119 Wn.2d 1011 (1992).

Here, there is sufficient evidence to support the conviction, particularly when the evidence is viewed in the light most favorable to the State and all reasonable inferences are interpreted most strongly against the defendant. The State's case includes evidence that (1) deputies contacted Nordvall with probable cause to arrest him for threats; (2) during their initial contact, Nordvall told the officers to "fuck off"; (3) when deputies bore an eye level hole through the wall into Nordvall's room to see into that room, there was a pop that coincided with a spray of sheetrock and Deputy Pacey being hit in the arm; (4) the deputies, with 22 and 13 years of experience as law enforcement officers thought the pop was a pistol firing; (5) as they retreated from the room, they saw a smaller hole next to the hole they made that was consistent with a shot from a pellet rifle; (6) Nordvall was the only person in his bedroom; (7) in the bedroom with Nordvall, deputies located a high powered pellet rifle; (8) deputies also found loose pellets on the floor; (9) a pellet fired from a pellet rifle is capable of penetrating skin, muscle, and dry wall; (10) Nordvall refused to comply with deputies'

commands that he show his hands; and (11) Nordvall struggled with deputies attempting to take him into custody. In short, there was circumstantial evidence that Nordvall intentionally assaulted Deputy Pacey by firing a pellet gun through the drywall and hitting Deputy Pacey in the bicep protector. Nordvall's appellate arguments were rejected by the jury and are non-reviewable credibility determinations. There is sufficient evidence to support Nordvall's conviction, and this Court should affirm.

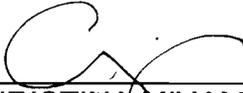
D. CONCLUSION

Taking as true the State's evidence and drawing all reasonable inferences in the State's favor, the evidence supports the jury's conclusion that Nordvall fired the pellet rifle at Deputy Pacey and that he is guilty of Assault in the Third Degree. This Court should affirm.

DATED this 20th day of June, 2011.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG
Prosecuting Attorney

By: 
CHRISTINA MIYAMASU, WSBA 36634
Deputy Prosecuting Attorney
Attorneys for the Respondent
WSBA Office #91002

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 SUSAN F. WILK, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. DAVID NORDVALL, Cause No. 65915-4-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.

Hunter Z. Cooper Goodwin
Name
Done in Kent, Washington

6/20/11
Date