

NO. 65993-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

KIAHNU DORSEY,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY,
JUVENILE DIVISION

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. A person is guilty of assault in the fourth degree if he assaults another.¹ An assault can be an unlawful touching. A touching is unlawful if it was neither legally consented to nor otherwise privileged, and was harmful or offensive to another. Was there sufficient evidence to support the trial court's findings and conclusion that Dorsey unlawfully and intentionally assaulted his mother by continually pushing the door into her causing her pain despite her repeated pleas to stop?

2. Parents have a statutory duty of care for a dependant child pursuant to RCW 26.20.035(1)(a).² This statutory duty provides the child with a privilege to enter the family home. Is an otherwise harmful or offensive touching of another privileged if it occurred as the child attempts to enter the family home?

B. STATEMENT OF THE CASE

On April 25, 2010, Ms. Dorsey was resting in her bed recovering from a recent surgery. Report of Proceedings (RP) 29, Clerk's Papers (CP) 40 (finding of fact 2-3). Kiahnu Dorsey entered

¹ RCW 9A.36.041.

² RCW 26.20.035(1)(a) reads: Except as provided in subsection (2) of this section, any person who is able to provide support, or has the ability to earn the means to provide support, and who: Willfully omits to provide necessary food, clothing, shelter, or medical attendance to a child dependent upon him or her...is guilty of nonsupport.

his mother's bedroom and shortly thereafter Kiahnu and his mother began to argue. RP 29, CP 41 (findings of fact 4). Following the argument Kiahnu left the house. RP 30, CP 41 (finding of fact 5). While Kiahnu was away from the house, Ms. Dorsey felt afraid, and decided to pack a duffel bag with money and clothing for Kiahnu. RP 30, 37. Kiahnu returned to house around 3:30 p.m. and was met at the door by Ms. Dorsey, who refused to let him inside. RP 30-31, (CP) 41 (finding of Fact 6-7). Ms. Dorsey opened the door wide enough to pass the duffel bag to Kiahnu and stated, "I don't want you to come back in here." RP 17, 31. Ms. Dorsey then told Kiahnu that she did not feel safe based on what had happened previously. Id.

While Ms. Dorsey was behind the front door with the duffel bag in her hand, Kiahnu began to push on the front door causing the edge the door to push into Ms. Dorsey's incision from a recent surgery. RP 33-34. As Kiahnu was pushing the door Ms. Dorsey repeatedly stated, "You need to stop, you're hurting me." RP 32, CP 41 (finding of fact 14). Kiahnu ignored his mother's first two requests to stop and continued pushing on the door. CP 41 (finding of fact 15). On Ms. Dorsey's third request for Kiahnu to stop she stated, "I'm going to call the police if you don't stop. You're hurting

my incision site, you're hurting it." RP 32. Dorsey responded, "Call the police." RP 34. Kiahnu continued to gradually push on the door despite the requests of his mother to stop, and finally entered the house. RP 34.

When he entered the house Ms. Dorsey retreated to the bathroom and called the police. Id. Ms. Dorsey testified that she retreated to the bathroom because she felt safe in there. Id. When police arrived Kiahnu was sitting at the dining room table. Id.

C. ARGUMENT

Kiahnu Dorsey challenges his conviction for Assault in the Fourth Degree-Domestic Violence claiming that there was insufficient evidence to support his conviction. Kiahnu argues that the State failed to prove the requisite criminal intent for assault because the evidence presented at trial showed that his intent was to enter the house not to assault his mother, Ida Dorsey. Br. of App. at 8-9.

Dorsey further argues that the State failed to prove an unlawful touching because as a juvenile, he had a statutory privilege to enter the family household therefore any touching that resulted from his effort to enter the house was privileged. Br. of App. at 9.

However, these arguments fail to present a clear and accurate picture of what actually occurred. The crime of assault occurred when Ms. Dorsey told Kiahnu to stop pushing the door because he was hurting her and he continued to push on the front door of the house. Even though Kiahnu had a statutory privilege to enter the family home, that privilege is not a defense to the crime of assault.

1. THERE WAS SUFFICIENT EVIDENCE PRESENTED AT TRIAL TO SUPPORT KIAHNU DORSEY'S CONVICTION FOR ASSAULT IN THE FOURTH DEGREE.

In a criminal matter, the State has the burden to prove every element of the crime charged. State v. Stevenson, 128 Wn. App. 179, 193, 114 P.3d 699 (2005) (citing State v. Teal, 152 Wn.2d 333, 337, 96 P.3d 974 (2004)). In a criminal sufficiency claim, the defendant admits the truth of the State's evidence and all reasonable inferences that may be drawn from such evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). On review, the evidence presented at trial is viewed in the light most favorable to the State. State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004). An appellate court must "defer to the trier of fact who resolves conflicting testimony, weighs the evidence and draws

reasonable inferences from the testimony." State v. Lawson, 37 Wn. App. 539, 543, 681 P.2d 867 (1984).

Following a bench trial, the reviewing court must determine whether substantial evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law. Stevenson, 128 Wn. App. at 193 (citing Perry v. Costco Wholesale, Inc., 123 Wn. App. 783, 792, 98 P.3d 1264 (2004)). "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the findings' truth." Stevenson, 128 Wn. App. at 193 (citing State v. Solomon, 114 Wn. App. 781, 789, 60 P.3d 1215 (2002)). Unchallenged findings of fact are verities on appeal, and conclusions of law are reviewed de novo. Stevenson, 128 Wn. App. at 193 (citing Perry, 123 Wn. App. at 792).

To prove the crime of assault in the fourth degree, the State must establish that the under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, a person assaults another. RCW 9A.36.041 (a). Three definitions of criminal assault are recognized in the State of Washington: (1) an attempt, with unlawful force, to inflict bodily injury on another person; (2) an unlawful touching of another with criminal intent; and

(3) putting another in apprehension of harm. State v. Walden, 67 Wn. App. 891, 893-94, 841 P.2d 81 (1992).

A touching is unlawful if it was neither consented to nor otherwise privileged. State v. Thomas, 98 Wn. App. 422, 424, 989 P.2d 612 (1999) (quoting State v. Garcia, 20 Wn. App. 401, 403, 579 P.2d 1034 (1978)). Criminal intent is an implied element of assault in the fourth degree. Thomas, 98 Wn. App. at 424.

- a. Kiahnu Dorsey's actions establish the requisite criminal intent for Assault in the Fourth Degree

Here the State proceeded under the theory that Kiahnu's actions constituted an unlawful touching of his mother with criminal intent. The intent required for assault is merely the intent to make physical contact with the victim, not the intent that the contact be a malicious or even criminal act. State v. Jarvis, 160 Wn. App. 111, 246 P.3d 1280, 1285 (2011).

Kiahnu argues there was insufficient evidence presented at trial to convict him of assault because the evidence indicated his intent was to get into the house, not to assault his mother. Br. of App. 8-9. However this argument is tenuous at best and not supported by the facts of this case.

During the confrontation at the door, Ms. Dorsey repeatedly told Kiahnu to stop pushing the door because it was hurting her incision site. RP 32, CP 41 (finding of fact 14). Despite the constant pleas from his mother to stop because he was hurting her, Kiahnu continued to push on the door. RP 32, CP 41 (finding of fact 15). Kiahnu's continued act of pushing on the door with knowledge that it was pushing into Ms. Dorsey's incision site constituted an intentional and unlawful touching.

The trial court's written and oral findings clearly illustrate that the physical contact created by Kiahnu pushing the door into his mother was an intentional act that was harmful or offensive. RP 51-52, CP 41 (finding of fact 14). A reviewing court is permitted to use the trial court's oral decision to interpret findings of fact and conclusions of law if there is no inconsistency. State v. Moon, 48 Wn. App. 647, 653, 739 P.2d 1157 (1987) (citing State v. Eppens, 30 Wn. App. 119, 633 P.2d 92 (1981)).

Viewing all the evidence in the light most favorable to the State, and drawing all reasonable inferences from that evidence, there was sufficient evidence to support Kiahnu's conviction for assault.

- b. A juvenile's statutorily created privilege to enter the home does not create a defense to assault.

Parents have a statutory duty to care and provide for their dependant children. RCW 26.20.035. This duty of care results in the child having a privilege to enter the family home. State v. Howe, 116 Wn.2d 466, 469, 805 P.2d 806 (1991). A parent may revoke a child's access to the family home once she has provided alternative means for taking care of her child's necessities. Howe, 116 Wn.2d at 470.

Kiahnu asserts that there was insufficient evidence to support the finding and conclusion that he intentionally assaulted his mother because his conduct was privileged. Br. of App. at 9. Kiahnu relies on RCW 26.20.035 and State v. Howe, supra, to support his proposition, however this reliance is misplaced. First, Howe dealt with the issue of when a parent's revocation of a child's privilege to enter the home becomes effective in burglary cases. Howe, 116 Wn.2d at 469-70.

In Howe the court held that a juvenile can only be convicted of burglary of his family home when his privilege to enter the home has been expressly and unequivocally revoked and the parent has provided alternative means of satisfying her statutory duty of care.

Howe, 116 Wn.2d at 477. The holding in Howe is not analogous to the present case. Here Kiahnu was charged with assault and not burglary of the family household. Moreover, the threshold issue at trial was not whether Kiahnu had a right to enter the family home, but whether the manner in which he chose to do so was lawful. Based on the testimony presented the trial, the trial court found that Kiahnu's actions amounted to an assault.

Second, RCW 26.20.035 does not provide a defense to the crime of assault. Although Ms. Dorsey testified that she did not provide alternative means for Kiahnu's care when she refused to let him enter the home, a child is not entitled to enter the family home by any means necessary and to the physical detriment of another. Kiahnu is not entitled to cloak himself in the privilege provided under RCW 26.20.035 to excuse his conduct. The actions of Ms. Dorsey are not on trial, and despite whether her parenting practices were ill-advised, Kiahnu's actions are not excusable. Thus, there was sufficient evidence presented at trial to support the trial court's findings and conclusion that Kiahnu intentionally assaulted his mother.

D. CONCLUSION

A person is guilty of Assault in the Fourth Degree if: "under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, a person assaults another." RCW 9A.36.041 (a).

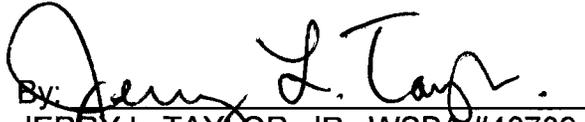
Here the evidence demonstrated that Kiahnu intentionally assaulted his mother by repeatedly pushing the front door into her as he forced his way inside the house, knowing it was causing her pain.

Viewing this evidence in the light most favorable to the State, there was sufficient evidence presented at trial to support the trial court's findings and conclusion that Dorsey intentionally assaulted his mother, Ida Dorsey, on April 25, 2010. Thus, this court should affirm Kiahnu Dorsey's conviction for Assault in the Fourth Degree-Domestic Violence.

DATED this 28th day of April, 2011.

Respectfully submitted,

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