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NO. 71332-9-I

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

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2014 JUL 29 PM 1:11

STATE OF WASHINGTON,

Respondent,

v.

STEVEN W. STINE,

Appellant.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. ISSUES1

II. STATEMENT OF THE CASE 1

III. ARGUMENT5

A. THERE WAS AMPLE EVIDENCE FOR A RATIONAL TRIER OF
FACT TO HAVE FOUND THE ESSENTIAL ELEMENTS OF THE
CHARGED CRIME HAD BEEN PROVEN BEYOND A
REASONABLE DOUBT.....5

IV. CONCLUSION8

TABLE OF AUTHORITIES

WASHINGTON CASES

<u>State v. Bradley</u> , 141 Wn.2d 73, 110 P.3d 358 (2000)	7
<u>State v. Camarillo</u> , 115 Wn.2d 60, 794 P.2d 850 (1990)	6
<u>State v. Cantu</u> , 156 Wn.2d 819, 132 P.3d 725 (2006).....	6
<u>State v. Hosier</u> , 157 Wn.2d 1, 133 P.3d 936 (2006).....	5
<u>State v. Jackson</u> , 62 Wn. App. 53, 813 P.2d 156 (1991).....	6
<u>State v. Kintz</u> , 169 Wn.2d 537, 238 P.3d 470 (2010)	5
<u>State v. Mierz</u> , 127 Wn.2d 460, 901 P.2d 286 (1995).....	7
<u>State v. Randecker</u> , 79 Wn.2d 512, 487 P.2d 1295 (1971).....	5
<u>State v. Salinas</u> , 119 Wn.2d 192, 829 P.2d 1068 (1992).....	5
<u>State v. Stewart</u> , 141 Wn. App. 791, 174 P.3d 111 (2007).....	5

I. ISSUES

Is there sufficient evidence in the record to support the conviction of one count of Third Degree Assault?

II. STATEMENT OF THE CASE

This case was regarding a fist-fight between the defendant and a uniformed police officer. The fight was egregious enough that two civilians stopped to aid the officer before other officers arrived at the scene. 12/10/13RP 101, 107, 108-109, 139-141.

On October 3, 2013, Officer Donald Blakely was working for the Lynnwood Police Department as a patrol officer, in full uniform. Officer Blakely had approximately three and a half years of experience as a police officer at that time. At about 7:30 p.m., Officer Blakely had just taken a report on a stolen bicycle when he saw the defendant walking with the stolen bicycle about two streets from the location of the theft.¹ Officer Blakely contacted the defendant. Initially, the defendant was slow to comply with Officer Blakely's commands. He completely stopped complying when Officer Blakely told him to lie down on the ground. Officer Blakely

¹ The bicycle was the stolen bicycle in question, but, as it was not relevant to present charge, the court did not allow testimony that the defendant claimed to have found the bicycle behind the nearby Albertson's then later said he found it behind a more distant motel. 12/9/13RP 28, 78, 131, 146.

attempted to gain compliance by physically moving to handcuff the defendant. Officer Blakely explained that he has had extensive training in hands-on arrests, at the police academy, in-house training with Lynnwood Police and through his own hobbies. 12/10/13RP 97-105.

Officer Blakely took hold of the defendant's right hand and told him he was under arrest. The defendant pulled away from Officer Blakely and tried to free his right hand. Officer Blakely grabbed the defendant's left arm to try to pull that around behind him to be able to handcuff the defendant. The defendant continued pushing and pulling away from Officer Blakely. Officer Blakely then stepped in front of the defendant and swept his legs to take him to the ground. The defendant continued to struggle and flail about until a point that Officer Blakely indicated he could tell it was no longer just resisting but had turned into a fight. 12/10/13RP 105 – 106.

Officer Blakely described the situation for the jury, testifying that he was straddling the defendant's legs, the defendant was facing him and spun his body, the defendant's arm came up and struck Officer Blakely in the face. Officer Blakely was not certain if the defendant hit him with his fist or his elbow on that initial swing.

Officer Blakely response was to begin striking the defendant back with his fists. The defendant was "punching" Officer Blakely in the chest and face. Officer Blakely described the situation at this point as "...it's a fight basically. That's the only way I can describe it." When asked if the defendant's arms were just flailing about, Officer Blakely described the defendant's motions as the defendant was trying to strike him; the defendant's hands were in clenched fists and were in a striking motion. It was clear to Officer Blakely the defendant was trying to hit him. 12/10/13RP 107.

A passing civilian then stopped his vehicle and offered to help Officer Blakely. Officer Blakely gladly accepted the help. The civilian grabbed the defendant's legs. 12/10/13 RP 108.

Officer Koonce of the Lynnwood Police Department testified he had approximately 21 years of experience in law enforcement. 12/10/13RP 135. When he arrived at the scene, there were two civilians assisting Officer Blakely. Officer Koonce described the situation for the jury as follows, "There's a difference between just holding someone down until the police gets there and then - - I've shown up to a lot of in-progress assaults where, I mean, it's on. People are having a hard time. People are still struggling and fighting. This was definitely that." 12/10/13RP 140. Officer Koonce

also testified that it looked like the defendant was trying to strike at Officer Blakely and the two civilians to try to get them to let go of him. 12/10/13RP 141.

Even when additional officers arrived, they were not able to gain compliance from the defendant. Officer Blakely described the defendant as appearing to be under the influence of some sort of narcotic. He and Officer Koonce testified that pain compliance was not effective; the defendant appeared to not be feeling any pain. Officer Blakely described a number of pain compliance tactics that were used, such as, choke holds, knees to ribs, etc. These pain compliance tactics appeared to have no deterrent effect on the defendant at all. 12/10/13RP 110 – 112; 143

The officers were finally able to handcuff the defendant and Officer Koonce advised him of his constitutional rights. The defendant waived his rights and when Officer Koonce asked him about the fight, the defendant responded that he was “just wrestling turtle style.” 12/10/13RP 145 - 146.

Officer Blakely received a cut and scrape on his lower lip during the incident. Photographs of the injury were taken that night and were admitted into evidence and shown to the jury. 12/10/13RP 114.

III. ARGUMENT

A. THERE WAS AMPLE EVIDENCE FOR A RATIONAL TRIER OF FACT TO HAVE FOUND THE ESSENTIAL ELEMENTS OF THE CHARGED CRIME HAD BEEN PROVEN BEYOND A REASONABLE DOUBT.

Under the applicable standard of review, there will be sufficient evidence to affirm a criminal conviction if any rational trier of fact, viewing the evidence most favorably toward the State, could have found the essential elements of the charged crime were proved beyond a reasonable doubt. State v. Kintz, 169 Wn.2d 537, 551, 238 P.3d 470 (2010). A challenge to the sufficiency of the evidence admits the truth of the States' evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006).

In testing the sufficiency of the evidence, the reviewing court does not weigh the persuasiveness of the evidence. Rather, it defers to the trier of fact on issues involving conflicting testimony, credibility of witnesses, and the weight of the evidence. State v. Stewart, 141 Wn. App. 791, 795, 174 P.3d 111 (2007). Evidence favoring the defendant is not considered. State v. Randecker, 79 Wn.2d 512, 521, 487 P.2d 1295 (1971) (negative effect of

defendant's explanation on State's case not considered), State v. Jackson, 62 Wn. App. 53, 58 n.2, 813 P.2d 156 (1991) (defense evidentiary inference cannot be used to attack sufficiency of evidence to convict). Credibility determinations are for the trier of fact and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); State v. Cantu, 156 Wn.2d 819, 831, 132 P.3d 725 (2006).

The state was required to prove that on or about October 3, 2013, in the State of Washington, the defendant intentionally assaulted Officer Donald Blakely and, that at the time of the assault, Officer Blakely was a law enforcement officer who was performing his official duties.

The state met this burden. Although there was some testimony about flailing arms, the witnesses were very clear, the defendant escalated to an actual fist-fight with Officer Blakely. Officer Blakely was clear, this was not a one-time punch that could have been misinterpreted. After the defendant turned and threw the initial punch or elbow to Officer Blakely's face, he continued punching Officer Blakely repeatedly in the face and chest with clenched fists. The defendant was continuing to fight even after two civilians and come to Officer Blakely's aid. The fight was still

going on when Officer Koonce arrived. He described the situation as being an assault in progress. Officer Blakely was injured by the assault and his injuries were documented in photographs. Looking at the evidence in the light most favorable to the state, there was sufficient evidence for a rational trier of fact, to have found the essential elements of the charged crime were proved beyond a reasonable doubt.

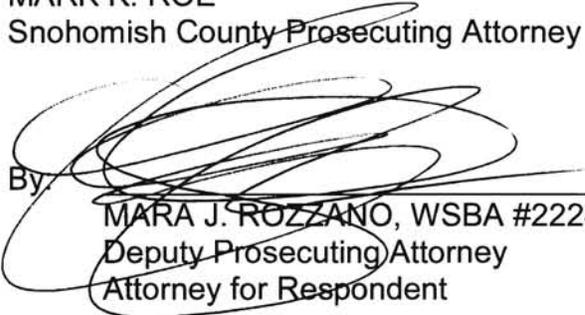
The defendant's brief references alleged "excessive show of force and unreasonable demands" claiming it is "likely Mr. Stine was merely trying to defend himself from the officer's blows and free himself from the officer's hold." Appellant's Brief 7. This is not relevant, as self-defense is not an issue here. For a claim of self-defense, the defendant would have needed to be in fear of serious bodily injury or death. State v. Mierz, 127 Wn.2d 460, 901 P.2d 286 (1995); State v. Bradley, 141 Wn.2d 73, 110 P.3d 358 (2000). Furthermore, the argument that he was likely acting to defend himself implies that he was acting intentionally and not simply flailing about.

IV. CONCLUSION

For the reasons stated above, the conviction should be affirmed.

Respectfully submitted on July 28, 2014.

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