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Court of Appeals
Division I
State of Washington

NO. 73010-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ERIKA ANNE SOERENSEN,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE REGINA CAHAN

BRIEF OF RESPONDENT

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A. ISSUE

1) Did the State present sufficient evidence from which a rational trier of fact could conclude that when Soerensen intentionally steered her car toward cyclist Vanderplas – hitting him – she committed an assault in the second degree?

2) Is there a scrivener's error in the judgment and sentence regarding the crime of conviction?

B. STATEMENT OF FACTS

On a warm July morning in 2013, Jacob Vanderplas and Erika Soerensen – both residents of West Seattle – were making their way to work at about 8 o'clock. Vanderplas was on a bicycle and Soerensen was driving a 2,500-pound four-door Nissan Sentra. RP 356; Exhibit 9. Vanderplas was following his usual route northbound on 26th Avenue S.W. RP 167-69.¹ Soerensen had deviated from her usual route – northbound on Delridge Way S.W. – because construction on Delridge Way S.W. had tied up traffic to the point that she feared she would be late for work. RP 469. She

¹ Exhibit 5 is a map that was admitted at trial and was used by numerous witnesses to illustrate their testimony. The State has also designated a number of photographic exhibits to help this Court understand the testimony.

would "get in trouble" and be "written up" if she was late. RP 471. She moved over to 26th Avenue S.W. to avoid the congestion. RP 470.

In an effort to make the street safer for cyclists, city engineers had recently reduced the speed limit to 20 miles per hour, had constructed speed bumps mid-block, and had installed traffic circles at the intersections. RP 183. Vanderplas was aware of these changes because he had advocated for them. RP 170-71, 208-09. Soerensen had never before driven on this street. RP 468.

Vanderplas was traveling north on 26th S.W. just past S.W. Alaska Street at about 15 m.p.h. when he heard a car coming up behind him very fast. RP 174. He was riding on the right side of the roadway just far enough in the road to avoid doors that might swing open from parked cars. RP 175. The approaching car started to pass him just as they both came upon an intersection with a short dead end road to the left (referred to in the record as a "little road nubbin"). RP 175. See Exhibit 5. However, because there was a traffic circle at this intersection, Vanderplas was able to easily maneuver his bicycle around the traffic circle without braking, whereas Soerensen had to slow down. RP 176. Thus, Vanderplas

remained in front of Soerensen. RP 176. Vanderplas approached the next intersection at S.W. Genesee Street, stopped at the stop sign, and then pointed to the speed limit sign to indicate to the Soerensen – the driver of the car behind him – that the limit was 20 m.p.h. RP 177, 182-83.

Vanderplas then proceeded through the intersection of 26th Avenue S.W. and Genesee S.W. Exhibit 1 is a photograph showing the view looking northbound; the road narrows so that only one car can pass at a time. RP 177.² Soerensen was still behind him at this point. RP 177. Just after crossing S.W. Genesee Street, Vanderplas pulled into a parking space to allow an *oncoming* car to pass southbound. RP 177. He continued on his way. Because the road is slightly downhill at this point, Vanderplas was traveling at about 20 m.p.h. RP 180-81, 211-12.

When he reached S.W. Dakota Street, Vanderplas looked back and saw that Soerensen's car was "still navigating how to get past the oncoming [southbound] vehicle." RP 180. Moments later – while about halfway between S.W. Dakota Street and the next intersection at S.W. Andover Street – Vanderplas heard

² Exhibits 1-4 are photographs showing the relevant roadways.

Soerensen's car continuously laying on the horn for a block and a half as it approached him. RP 180, 212-13. He was still riding on the right side of the roadway, about 4-5 feet from parked cars, and in a straight line. RP 181. He was startled by the horn and turned around and shouted at Soerensen, "What the fuck are you doing?" RP 182. Soerensen pulled her car alongside Vanderplas on the left and screamed at him. RP 183-84. He could not hear what she was saying because her windows were rolled up, but she appeared "very angry." RP 184, 215. He decided to ignore her.

After stopping at S.W. Andover Street and checking for cross-traffic, he turned right onto S.W. Andover and entered the bike lane provided for eastbound cyclists. RP 184-87.³ Soerensen's vehicle followed, making the right turn onto Andover with engine revving and tires squealing. RP 187-89. Vanderplas had gone only a short distance after the turn and was traveling at between 5 and 10 m.p.h. as Soerensen's car passed him. RP 192. As the rear wheels of Soerensen's car drew even with Vanderplas, the car moved suddenly and "very quickly" into the bike lane such that the whole nose of the car was in the bike lane; Vanderplas

³ Exhibits 3 is a photograph showing the intersection. Exhibit 4 shows the bike lane and the view east on Andover S.W. Exhibits 6 and 7 show that the bike lane is more than 4 feet wide.

could not get through. RP 193-94, 219. Vanderplas tried to brake quickly, but could not avoid the car and the left part of his handlebars and his left hand struck the rear of the car, knocking him and his bike to the ground. RP 194-95.⁴ Soerensen proceeded without stopping to the traffic signal at the end of the block, where she waited for the light to change and then turned left and onto Delridge Way S.W. RP 196. (Exhibit 4 shows the view toward the stoplight).

Soerensen testified to a somewhat similar series of events, but there were some important differences. She said that she was running late for work and had run into "terrible" traffic on Delridge Way S.W., so she took a detour going north on 26th Avenue S.W. RP 469-71. She testified there was no possibility she was going faster than 20 m.p.h. on 26th S.W. RP 471. She saw Vanderplas behind her on his bicycle, waved him through so they would not get stuck at the traffic circle, and then she was surprised when he pointed up at the 20 m.p.h. sign. RP 473-74. She claimed that she was not listening to loud music; she listens to NPR in the morning. RP 475. She was not mad when he pointed at the speed limit sign; rather, she was "confused" by his behavior because she was just

⁴ Vanderplas' hand and wrist were injured, but not broken. RP 202-04.

trying to "help him through" and "shar[e] the road." RP 477.

Soerensen testified that Vanderplas then began weaving back and forth on the narrow road so that she was unable to pass. RP 478.

She was confused and frustrated and feared he might be drunk or was not well and was going to cause a collision, so she honked her horn – "Beep Beep" – but he did not stop. RP 478, 503. She said she could not back off or slow down because "my car would have stalled out ... because he was controlling my speed." RP 503.⁵

This continued for nearly two blocks off-and-on and she finally "kind of laid on the horn" because Vanderplas was not responding. RP 479. They screamed back and forth at each other. RP 480-82.

When they turned at the intersection of 26th and Andover, she had decided that she just wanted to get away from him so the last thing she said was, "Have a nice day." RP 483. As for her driving as she turned onto S.W. Andover and whether she tried to scare

Vanderplas with her car, Soerensen testified:

No, I would never do that – never do that. ... I just wanted to get away from him. I don't know if when I turned I was too close? I don't know what happened, but I just wanted to get away from the situation and then go to work. ... I would never, ever, ever, ever want to physically hit somebody.

⁵ She did not explain why her car would stall for a slow-moving bicycle but not for a slow-moving car, or when she stopped at a stoplight, or when a pedestrian crosses her path.

RP 483. She described driving to the stoplight at S.W. Andover and Delridge Way S.W., waiting for the light to change, and then driving onto the West Seattle freeway. RP 484. She claimed not to have seen another cyclist on the road. RP 479.⁶ She said nothing about encountering a vehicle on 26th Avenue S.W. that wanted to proceed southbound and having to wait for that vehicle to back up and pull over.

Eric Rajski lives in West Seattle and works for a biodiesel firm in Pioneer Square. RP 255. He was riding his bike to work that same morning. RP 257-58. It is apparent from the record that he does not know either Soerensen or Vanderplas. His commute takes him east on S.W. Genesee Street and then north on 26th Avenue S.W. RP 257-58. On this day, as he came to the intersection of S.W. Genesee Street and 26th Avenue S.W., he saw a dark car with California license plates "tailing a bicycle very closely" as the two cars passed northbound through the intersection. RP 258-59, 261. He turned left and pulled in behind Soerensen's car and noticed that it was playing music "crazy loud." RP 260. He recalls the music because it was a band he likes –

⁶ She testified that although she remembers a cyclist glaring at her at the stoplight and a black sports-utility vehicle following her on the West Seattle freeway, she claims that she did not connect these occurrences to Vanderplas; she just thought to herself, "weird morning." RP 484-86.

New Order – and the music was “blasted very loud and all the windows were rolled up.” RP 260.

Rajski testified that Sorensen’s car had to wait just north of Genesee Street S.W. as another car proceeding southbound blocked the road. RP 263. The southbound car was driven by an older gentleman with gray hair. RP 276. “The two cars wouldn’t let each other through for a moment.” RP 263. Rajski stopped two or three inches behind Soerensen’s car as they waited to see who would yield. RP 261. Initially, neither car would move, but finally the southbound car backed up to let Soerensen’s car through, and that driver allowed Rajski to pass, too. RP 263. Soerensen’s car then “took off at a very high, accelerated speed, racing her engine.” Id. He testified that it was a narrow street and Soerensen’s car “floored it. It wasn’t a normal accelerated speed; it was very fast.” Id.⁷ Soerensen then “held her horn down and didn’t let off of it, and it wasn’t like a beep, beep or a friendly toot, it was – the horn was on for – non-stop ... the entire two blocks about up to ... Andover.” RP 263, 279.

⁷ On cross-examination he said that she pulled away at “an accelerated rate of speed that was higher than I would normally see or – it’s nothing that I would do.” RP 278.

Rajski testified that as the two cars were facing off, Vanderplas proceeded ahead about a block because he had not been delayed by the southbound car. RP 264-65. Soerensen's car caught up with him "very quickly", but by the time Rajski arrived at the intersection of 26th Avenue S.W. and S.W. Andover, Vanderplas was on the ground on Andover, and Soerensen was waiting for the light at Delridge Way S.W. and S.W. Andover Street. RP 268. Rajski pursued the car, saw the young woman driving, obtained her license plate number, then returned to assist Vanderplas. RP 269.

Michael Spencer is an air force pilot and officer who lives in the area and who was driving to All-Star fitness near S.W. Andover Street. RP 287-89. It is apparent from the record that he did not know either Vanderplas or Soerensen. He was westbound on S.W. Andover Street approaching the "T" intersection with 26th Avenue S.W. when he saw a bicycle (Vanderplas) turn right onto S.W. Andover Street from S.W. 26th Avenue. RP 290. "A second later or within a short amount of time" he saw a dark-colored sedan (Soerensen) also turn onto S.W. Andover Street eastbound. Id. Something was unusual about the scene; it almost appeared like the driver of the car was trying to talk to the cyclist. Id. As Spencer passed them he continued to watch through his rearview mirror on

the driver's side door. RP 292. As Soerensen turned onto S.W. Andover Street she "turned into the biker and hit the biker, and then drove off." RP 292. He said the car just "hit him and knocked him over." RP 293. "It was a definite two motions, basically. ...[I]t was not fluid. There was – it was one turn onto the Andover Street and then a separate turn to hit the biker." RP 293. The car turned into the bike lane far enough to hit the cyclist. RP 294. Spencer turned around and stopped to assist Vanderplas, but he did not see where Soerensen's car went. RP 295.

Rebecca Moxley was also driving west on S.W. Andover Street approaching 26th Avenue S.W. when she saw Vanderplas and Soerensen coming east. RP 381. She saw the front part of Soerensen's car go into the bike lane in a "quick" motion, hit Vanderplas, then "correct" her drive and proceed to the stop light. RP 382. The car went about ½ way into the bike lane and hit the bicyclist on his left side. RP 397-98. Moxley turned her car around and followed Soerensen onto the West Seattle Bridge where she called 911 and reported the California license plate and the description of the driver. RP 387-88.

Detective Cruise from the Seattle Police Department took over investigation of the case and, after reviewing all the relevant

material, he stopped by Soerensen's apartment to interview her six days after the incident. RP 325. He told her that he was investigating a collision that had occurred between a bicycle and a car at 26th and S.W. Andover Street at about 8 a.m. on the previous Monday morning. RP 329-30. She almost immediately said that she was not involved in any collision with a bicycle and that she had been at work at that time. RP 330. She continued to deny involvement and offered that the detective could call her workplace and inspect her car. RP 333. Detective Cruise inspected the car and saw some damage on the passenger side, but the damage could not be tied to this incident. RP 335.⁸ Soerensen then became angry with the detective and accused him of pressuring her to confess. RP 337. He assured her that he simply wanted her to be truthful about what had happened. Eventually, she acknowledged that on the previous Monday she had a disagreement with a cyclist who was riding slowly in the middle of the road, she passed him, and then she proceeded to work. RP 338-40. She denied that her car made any contact with the bike.

⁸ Even though the State was not claiming this damage was caused by striking Vanderplas, a witness testified for Soerensen that the car was damaged when she bought it. RP 517-20. An engineer also testified that the damage could not have been caused by a bicycle. RP 455-65.

RP 340. Approximately 10 days later Soerensen sent the detective an email that described the incident in greater detail. RP 341. That message was introduced at trial as exhibit 15.

Soerensen was charged with assault in the second degree under the theory that she used her vehicle as a deadly weapon. CP 1. She was convicted as charged. CP 56. She was given a sentence below the standard range. CP 86. The court found that the assault was significantly less egregious than other assaults with deadly weapons. CP 10; RP 626. Soerensen appealed and the State filed a notice of cross-appeal as to the sentence.⁹

C. ARGUMENT

Soerensen argues on appeal that insufficient evidence was presented to convict her of assault in the second degree and that there is a scrivener's error on the judgment and sentence. She is mistaken as to the sufficiency of the evidence, but correct as to the judgment. Her conviction should be affirmed, but remanded for the limited purpose of correcting the scrivener's error.

⁹ The State abandons its challenge to the mitigated sentence.

1. SUFFICIENT EVIDENCE WAS PRESENTED TO SHOW THAT SOERENSEN USED HER CAR AS A DEADLY WEAPON TO ASSAULT VANDERPLAS.

Soerensen argues that the State did not prove that she intended to hurt Vanderplas, that she intended to place him in fear of injury, or that she used her car as a “deadly weapon.” Her testimony at trial aimed to convince the jury that she was confronted with some confusing, strange, and frustrating circumstances on the morning in question, but that she handled the situation with aplomb, and simply left. The limited factual summary set forth in Soerensen’s opening brief takes this same approach, telling the story mostly from Soerensen’s perspective, omitting important testimony and failing to note the many reasonable inferences that can be drawn from the full record. The State’s evidence showed that on the morning of these events, Soerensen was impatient, then frustrated, then angry and then assaultive. Her arguments as to insufficiency of the evidence must be rejected if the proper standard of review is applied.

a. Standard of Review

The due process clause of the Fourteenth Amendment to the United States Constitution requires the State to prove every

element of a charged crime beyond a reasonable doubt. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995); State v. Salinas, 119 Wn.2d 192, 829 P.2d 1068 (1992). Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, "... any rational trier of fact could have found guilt beyond a reasonable doubt." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Salinas, 119 Wn.2d at 201. "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Id. Circumstantial and direct evidence carry equal weight. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107 (2000). A reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, only that substantial evidence exists in the record such that a reasonable juror could conclude that the defendant was guilty. Fiser, 99 Wn. App. at 718.

b. The Evidence Was Sufficient To Prove Assault
By Intentionally Striking Or By Intent to Create
Fear

Soerensen claims the State failed to prove that she intended to injure or create fear in Vanderplas. This argument should be rejected.

Soerensen was charged with assault in the second degree under RCW 9A.36.021(c). That prong of the statute requires the State to prove that she assaulted another with a deadly weapon. "Assault" is defined today as it was at common law. State v. Byrd, 125 Wn.2d 707, 712, 887 P.2d 396 (1995). An assault is committed if there is an unlawful touching (a battery), an unsuccessful attempt to inflict bodily injury (an attempted battery), and putting another in reasonable apprehension of harm. State v. Elmi, 166 Wn.2d 209, 215, 207 P.3d 439 (2009).

The State argued in this case that Soerensen had committed either a battery, or that she had intended to place Vanderplas in fear of injury. As to these theories of assault, the jury was instructed that "an assault is an intentional touching or striking of another person that is harmful or offensive regardless of whether any physical injury is done to the person" and "and is also an act done with the intent to create in another apprehension and fear of

bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.” CP 41.

These two types of assault require different mens rea. In State v. Baker, 136 Wn. App. 878, 881, 151 P.3d 237, 239 (2007), the defendant fled from police and, when cornered, backed his car into the pursuing officer’s car, causing damage to the police car. The Court of Appeals affirmed the conviction even though the jury instructions had not required a finding of specific intent to injure or frighten.

To prove assault based solely on an attempt to injure, the State must show that the defendant specifically intended to cause bodily injury. State v. Eastmond, 129 Wn.2d 497, 500, 919 P.2d 577 (1996). But the State need not prove specific intent—either to inflict substantial bodily harm or to cause apprehension—if unlawful physical contact occurs. That is an actual battery. State v. Daniels, 87 Wn. App. 149, 155, 940 P.2d 690 (1997). Assault by actual battery consists of an intentional touching or striking, whether or not any physical injury results. Therefore, the State need show only the intention to touch or strike, not the intent to injure. State v. Hall, 104 Wn. App. 56, 62, 14 P.3d 884 (2000).

Baker, 136 Wn. App. At 883-84.

Taken in the light most favorable to the prosecution and drawing all inferences most strongly against the accused, the

evidence shows that any reasonable juror could have concluded that Sorensen intended to and did cause a battery by steering her car into Vanderplas. The evidence also shows a reasonable juror could have concluded that Soerensen intended to cause apprehension and fear in Vanderplas.

That evidence can be summarized as follows. The events leading up to the collision show that Soerensen was in a hurry, frustrated with her slow progress to work, and angry at Vanderplas for getting in her way. Soerensen was trapped in construction-caused traffic and she was afraid she would be late for work and would be in trouble and "written up." She thus took a detour from her usual route onto a street she had never before driven; a narrow street with a speed limit of 20 m.p.h., speed bumps, traffic circles, and bicyclists. A juror could reasonably conclude that these circumstances would increase her anxiety.

The evidence also shows that she encountered a bicyclist (Vanderplas) in her path and quickly overtook that bicyclist, but she was unable to pass because he could more easily move through a traffic circle on his bicycle than could she in her car. Thus, she was unable to get in front of him. Although Soerensen said that she waved him to go ahead of her, a juror could reasonably conclude

that her testimony was not credible, since it conflicted with Vanderplas' testimony, and because it also conflicted with Soerensen's later actions. She was clearly in a hurry and would not likely let a slow-moving bicycle get in front of her. She was bound and determined to proceed very quickly along 26th Avenue S.W.

Soerensen testified that Vanderplas rode his bicycle in a manner deliberately calculated to impede her progress. Her testimony is contradicted by Vanderplas' testimony—he said that he was riding down the right side of the road in a straight line. Moreover, even if the jury accepted her testimony on this point, it only provides additional evidence that she had a motive to be angry at Vanderplas, and to seek a pound of flesh.

Shortly after being unable to pass Vanderplas, Soerensen's progress was stymied by a southbound car driven by an elderly man. Soerensen refused to back off; forcing the elderly driver to reverse direction to let her through. Once that person politely yielded the road, Soerensen "flooded it" (according to independent witness Rajski) and accelerated at a high rate of speed until she was bearing down on Vanderplas with her horn continuously blaring. They exchanged angry words and insults. Vanderplas

described her as screaming at him through her closed windows. This evidence amply demonstrates that she was plenty angry at Vanderplas in the moments leading up to the turn onto S.W. Andover Street.

Vanderplas testified that after he turned onto S.W. Andover Street he heard a racing engine and squealing tires as Soerensen pulled away from the stop sign. She came along side of him and turned the car suddenly and "very quickly" into the bike lane such that the whole nose of the car was in the bike lane and Vanderplas could not get through. RP 193-94, 219. Mr. Spencer testified that Soerensen "turned into the biker and hit the biker, and then drove off." RP 292. He said the car just "hit him and knocked him over." RP 293. "It was a definite two motions, basically. ...[I]t was not fluid. There was – it was one turn onto the Andover Street and then a separate turn to hit the biker." RP 293. Ms. Moxley said she saw the front part of Soerensen's car go into the bike lane in a "quick" motion, hit Vanderplas, then "correct" her drive and proceed to the stop light. RP 382. The car went about ½ way into the bike lane and hit the bicyclist on his left side. RP 397-98.

Taking the testimony of these witnesses together with Soerensen's obvious frustration with her slow progress to work and her clear anger toward Vanderplas because he was an obstacle to her determined effort to get to the freeway as quickly as possible, it is entirely reasonable for a juror to conclude that she committed a battery and that when she steered into the bicycle lane in a quick and deliberate fashion, that she did so with the intent to strike Vanderplas. This evidence is sufficient to convict her under a battery theory of assault.

A jury also could have concluded that she formed the specific intent to create in Vanderplas a fear of injury. In State v. Toscano, the court analyzed an assault by vehicle case and observed:

Ms. Toscano first turned her car into the middle of a gravel road and toward Deputy Voss's patrol car and refused to yield. Ms. Toscano then 'darted' into the intersection with her high beams on 'like she was going to hit' Deputy Voss." The jury could have inferred that she drove in this manner because it was likely to cause a crash and would certainly make Deputy Voss afraid of crashing.

166 Wn. App. 546, 551, 271 P.3d 912 (2012). As to whether the trained officer would have been afraid, the court held:

Here there is evidence that Deputy Voss had apprehension of harm despite his experience as a

police officer. In both encounters, he had to avoid collisions. The jury could have easily inferred from Deputy Voss's actions that he was afraid of crashing into Ms. Toscano's car.

Toscano, 166 Wn. App. at 552. Here, the jury was justified in concluding that Vanderplas, who had to brake suddenly to avoid impact, was in reasonable apprehension of fear from being struck by a 2,500-pound car while unprotected on a bicycle. The jury was also entitled to conclude that Soerensen's testimony that she might have simply gotten "too close" to Vanderplas and his bicycle was not credible in light of the totality of the evidence.

Soerensen claims that the evidence here was "patently equivocal" like the evidence found insufficient in State v. Vasquez, 178 Wn.2d 1, 8, 309 P.3d 318 (2013). Vasquez is inapposite. That case dealt, however, with the limited inferences that can be drawn from mere possession. Courts have routinely held that it is improper to infer intent to defraud or intent to distribute from mere possession of contraband. By contrast, courts like Baker and Toscano, and the cases cited therein, routinely draw inferences from conduct that suggests intent. Here, the State does not argue – as Soerensen's strawman argument seems to suggest – that a jury could infer an intent to harm or frighten simply from the fact that

Soerensen's car struck Vanderplas. Rather, there is a plethora of evidence suggesting that Soerensen wielded her car as a weapon in frustration and anger against Vanderplas.

c. The Evidence Was Sufficient To Prove That Soerensen's Car Was Used As A "Deadly Weapon"

As noted above, Soerensen was charged with assault in the second degree by use of a deadly weapon. A deadly weapon for purposes of this case is defined by RCW 9A.04.110(6) as "any weapon, device, instrument, substance, or article including a vehicle, which under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm." CP 43. "Substantial bodily harm" is defined as "bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part." RCW 9A.04.110(4)(b). Whether a weapon is deadly under the circumstances in which it is used is a question of fact. State v. Carlson, 65 Wn. App. 153, 160, 828 P.2d 30 (1992).

The evidence detailed in the previous section shows that a reasonable juror could have concluded that Soerensen intended to either hit or frighten Vanderplas. Those same facts establish that Soerensen used a four-door 2,500-pound car to accomplish the assault on Vanderplas. It goes without saying that a 2,500-pound vehicle is "readily capable of causing death or substantial bodily harm." When used as it was here to deliberately and quickly turn into a cyclist on a public road, causing that person to fall to the pavement, it follows that a juror could reasonably conclude that the vehicle was a deadly weapon under the law.

2. THERE IS A SCRIVENER'S ERROR ON THE JUDGMENT THAT SHOULD BE CORRECTED.

Soerensen points out that the judgment and sentence lists two prongs of assault in the second degree. She is correct that only RCW 9A.36.021(c) should be listed on the judgment. The State agrees that the reference to RCW 9A.36.021(a) should be removed.

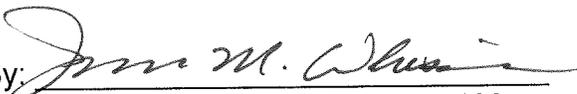
D. CONCLUSION

For the foregoing reasons, Soerensen's conviction for assault in the second degree should be affirmed, but the matter should be remanded solely to correct the error on the face of the judgment and sentence.

DATED this 17th day of December, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

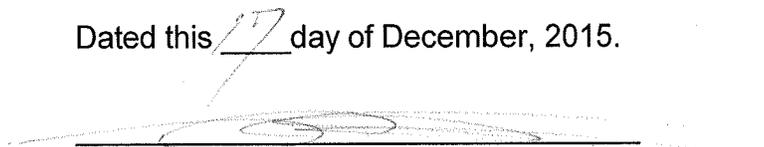
By: 
JAMES M. WHISMAN, WSBA #19109
Senior Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Maureen Cyr, the attorney for the appellant, at Maureen@washapp.org, containing a copy of the BRIEF OF RESPONDENT, in State v. Erika Anne Soerensen, Cause No. 73010-0, 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.

Dated this 17 day of December, 2015.


Name:
Done in Seattle, Washington