

NO. 44721-5-II

COURT OF APPEALS, DIVISION II

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STATE OF WASHINGTON,

Respondent,

vs.

BYRON ISABEL LOPEZ-MAZARIEGOS,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
FOR THURSTON COURT  
The Honorable Erik Price, Judge  
Cause No. 13-1-00060-5

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred in not taking the case from the jury for lack of sufficient evidence.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Whether there was sufficient evidence Lopez-Mazariegos intentionally assaulted Officer Gassett?

C. STATEMENT OF THE CASE

01. Procedural Facts

Byron Isabel Lopez-Mazariegos was charged by first amended information filed in Thurston County Superior Court March 15, 2013, with assault in the third degree, count I, resisting arrest, count II, and obstructing a law enforcement officer, count III, contrary to RCWs 9A.36.031(1)(g), 9A.76.020 and 9A.76.040. [CP 9].

No pre-trial motions were filed nor heard regarding either a CrR 3.5 or CrR 3.6 hearing. [CP 7]. Trial to a jury commenced March 19, the Honorable Erik D. Price presiding.

Neither objections nor exceptions were taken to the jury instructions. [RP 115].<sup>1</sup> The jury returned verdicts of guilty as charged,

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<sup>1</sup> All references to the verbatim report of proceedings are to the transcript entitled JURY TRIAL.

Lopez-Mazariegos was sentenced within his standard range and timely notice of this appeal followed.<sup>2</sup> [CP 37-39, 42-50, 53].

02. Substantive Facts

On January 11, 2013, at approximately 4:26 in the morning, uniformed Officer Charles Gassett was dispatched to the scene of a small BMW stopped in the middle of an intersection with its engine running and Lopez-Mazariegos sitting behind the driver's wheel with his head back against the headrest. [RP 24-25, 27, 32, 34, 36, 39]. His eyes appeared to be closed. [RP 47]. Getting no response by knocking on the window with his metal flashlight, Gassett opened the unlocked driver's door, put the automatic transmission in park and turned off the ignition, though he was unable to remove the key, at which point Lopez-Mazariegos "woke up" and yelled "No Policia" before striking Gossett in the head with his fist. [RP 33-34, 36-37, 47]. The struggle continued after Lopez-Mazariegos was advised he was under arrest, with Gossett telling him to step out of the car and Lopez-Mazariegos responding, "I didn't do anything," while latching on to the steering wheel and reaching for the ignition. [RP 37]. With the assistance of two officers who had arrived at the scene, Lopez-Mazariegos, who smelled of intoxicants and continued to

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<sup>2</sup> At sentencing, the court granted the State's motion to dismiss the obstructing charge, count III, on grounds unrelated to this appeal. [RP 04/03/13 16].

resist, was eventually removed from the vehicle and handcuffed. [RP 39, 41, 43-44, 55, 91]. Once in custody, he said, ““Okay. You got me.”” [RP 44]. Gossett sustained no injuries as a result of the incident. [RP 54].

D. ARGUMENT

THERE WAS INSUFFICIENT EVIDENCE  
THAT LOPEZ-MAZARIEGOS INTENTIONALLY  
ASSAULTED OFFICER GASSETT.

Due Process requires the State to prove beyond a reasonable doubt all the necessary facts of the crime charged. U.S. Const. Amend. 14; Const. art. 1, § 3; In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). The test for determining the sufficiency of the evidence is whether, after viewing the evidence in 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). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Salinas, at 201; State v. Craven, 67 Wn. App. 921, 928, 841 P.2d 774 (1992). Circumstantial evidence is no less reliable than direct evidence, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of insufficiency admits the truth of the

State's evidence and all inferences that reasonably can be drawn therefrom. Salinas, at 201; Craven, at 928.

As charged and instructed in this case [CP 9, 27], Lopez-Mazariegos is guilty of third degree assault if he assaulted Officer Gasset who was performing his official duties at the time of the assault. RCW 9A.36.031(1)(g). "(A)ssault," as defined by jury instruction No. 9, 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. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

An assault is also an act done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

[CP 26].

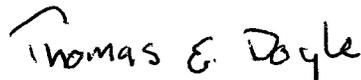
The State failed to present sufficient evidence that Lopez-Mazariegos intended to inflict injury upon Gasset or intentionally struck him in a harmful or offensive manner, even when viewing the evidence most favorably to the State. Narrowly framed, the issue is what did Lopez-Mazariegos intend by his actions, which can only be resolved by reviewing the events within the context of the relevant circumstances. Everything happened in a short period. No doubt Lopez-Mazariegos and Gasset were flailing about, with arms and legs going every which way,

which appears more reactive than intentional, given that Lopez-Mazariegos was awakened by Gassett's movements within his vehicle. Before this, by all accounts, he was asleep. He opened his eyes and there was Gassett, a police officer, seemingly appearing from nowhere. "No Policia," indeed. Reaction to what he saw? Yes. Intentional? No. The evidence was insufficient to permit a reasonable inference that Lopez-Mazariegos was acting intentionally throughout the encounter.

E. CONCLUSION

Based on the above, Lopez-Mazariegos respectfully requests this court to reverse and dismiss his conviction for assault in the third degree.

DATED this 30<sup>th</sup> day of September 2013.



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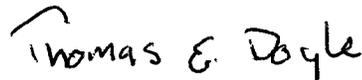
CERTIFICATE

I certify that I served a copy of the above brief on this date as follows:

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DATED this 30<sup>th</sup> day of September 2013.



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**September 30, 2013 - 4:25 PM**

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