

FILED

AUG 17 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 28393-3-III

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Respondent,

vs.

ERIC ALLEN HAGGIN,

Petitioner.

BRIEF OF RESPONDENT

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RESPONSE TO APPELLANT'S ASSIGNMENT OF ERROR

- A. There was sufficient evidence to convict Eric Haggin of Unlawful Possession of a Firearm in the first Degree on June 8, 2009.**

I. STATEMENT OF FACT

On June 8, 2009, Laura Patino was involved with the defendant, Eric Haggin. (RP IV, 3) They had been having problems in the relationship. (RP IV, 72) But on June 8, the two were not living together. Laura went over to where Eric was staying with Fred Krueger to confront him about money and her cell phone. (RP IV, 4-5) During the confrontation, Eric threw her on the bed. (RP IV, 7) He also hit her and grabbed her by the hair. (RP IV, 7) He was 6' 2" and she was 5'4". (RP IV, 8) He threw her against the wall. (RP IV, 8) At one point he said "he was going to fucking kill me." (RP IV, 8). She told the jury she was not scared; she said, "I told him to do it...Just do it." (RP IV, 8) He was hitting her in the head. (RP IV, 9) She was crying and she left (RP IV, 10-11) She got in the car and spoke with Jose, her 11 year old nephew. (RP IV, 11-13) Eric eventually came out and yelled at Jose, who by this time was knocking on a neighbor's door to call the police. (RP IV, 12-13) Jose got back in the car and Laura, from the car, decided to taunt the defendant, saying, " Ha ha. You tried to hit me, but I am still living, bitch." (RP IV, 13)

This made Eric mad. He told her to come here. She would wait until Eric got up with her and drive a little farther on. (RP IV, 13) She kept taunting him.

He would come up, and again she would then drive a little farther. (RP IV, 13)

This little taunting game was making Eric madder. He told her he would “fucking kill her!” (RP IV, 14) Laura drove a short ways up the road and then, instead of going home, went back to where Eric was now walking. (RP IV, 15) She drove up and told him she was going to call the police. (RP IV, 15) Then Melissa arrived. (RP IV, 16) Melissa Orozco was godmother to Laura’s sister’s son. (RP III, 4) She also sold drugs. She had called the defendant that day to see if he wanted to buy any. (RP III, 5) He told her to come over. (RP III, 5-6) Melissa testified she drove over and got a call from the defendant when she was just a few blocks away. (RP III, 6) The defendant was yelling, “Where the hell are you?!” (RP III, 6) When Melissa got up to Eric, she could tell he was arguing with Laura, who had her son and nephew in the car. (RP III, 7) Eric got into Melissa’s car. (RP III, 7)

Laura turned her car around and Melissa and Eric were now in a car behind her. Then Laura heard shooting. (RP IV, 17) Laura told police it was Eric shooting at her. (RP IV, 17-25)

Jose Macias, 11 years old, is Laura Patino’s nephew. (RP I, 37-38) He told the jury he was visiting with his aunt and went to pick up Laura’s baby at

Eric's house. (RP I, 38-40). He said Laura was upset about something happening to her cell phone and she wanted to confront Eric. (RP I, 41) Eric grabbed her hand and smashed her head into the wall. (RP I, 41) So they left. Then Laura honked at Eric and he came out. (RP I, 42) Eric tried to hit Laura and she drove away around the block. (RP I, 42) Jose said that Melissa, his aunt's friend, picked up Eric and that Eric then followed and shot at their car. (RP I, 43) Jose was able to describe a black, 6" semi-automatic pistol. (RP I, 44) He saw Eric out the passenger window. (RP I 44) He also said that Laura was very upset and couldn't breathe. (RP I, 45) He remembered flagging down police and telling them Laura needed help. (RP I, 45)

By the time Laura was testifying, Laura decided to say she wasn't sure who was shooting. (RP IV, 17-20, 25-26) Laura had told the police she had not believed Eric would kill her, but then with the shooting she did. (RP IV, 21) She told the defense on cross-examination she just saw a hand stick out the window with a gun and heard shots. (RP IV, 34-36) Much time was spent on how she was sure it was really Eric shooting at her when she spoke to the police, but now she wasn't sure. (RP IV, 36-42) Laura was impeached with her statement to the police over and over. (RP IV, 41-51)

She was able to describe the pistol as a black 9 mm. (RP IV, 49) Eric had told her during the relationship that he had a gun. (RP IV, 54) Meanwhile, Melissa Orozco said that once Haggin got into her car, he told her to go and he fired off a gun into the air. (RP III, 7) It was a black semi-automatic handgun, and she saw him bring it back in the window. (RP III, 10-11) Haggin again told her to go. (RP III, 9-10) She drove away with him telling her where to turn. (RP III, 10-11) She saw him throw something out the window. (RP III, 11) She dropped Haggin off at the Vantage Highway. (RP III, 12) She was so frightened that she had urinated on herself. (RP III, 12) She was also worried that she would get in trouble as an accomplice. (RP III, 14)

Eric Haggin testified and said it was actually Melissa who fired a gun, (RP IV, 94-95), although he did not say that Melissa was angry at all, but said she was smiling. (RP IV, 94-97) He admitted on the stand that he had never told the police anything about Melissa's shooting a gun. (RP IV, 100)

Corporal Matthews of the Ellensburg Police Department said he responded to the area around 3:30 to investigate a report of shots fired. (RP I, 30) Eventually he found a green sedan matching the one he was looking for, and the person inside waived him over. (RP I, 32) He stopped after recognizing Laura

Patino. (RP I, 32-33) A young man (Jose Macias) got out of the car when it stopped, raced over to him and told him Laura Patino had just been shot at by Eric Haggin, “and she’s scared,” and then he ran back to Laura’s car. (RP I, 32-33).

Officer Ingraham, who had also responded to the initial shots fired call, and who knew Laura well, decided to go talk to her. (RP I, 12) He found her shaking, with short breaths and a bruise on her face. (RP I, 13) She said, “He fucking shot at me!” (RP I, 13) The officer confirmed she meant Eric, the defendant. (RP I, 13) After some more conversation, and after Laura was able to make sure her baby was okay, the officer and Laura went to Freddie Krueger, Jr.’s house, where Haggin had been staying. (RP I, 15-17) Laura ran in and grabbed some of her underwear, and the deputy briefly cleared the house, seeing one room with an open gun case in the floor and an open crawl space. (RP I, 17) The house was secured for a search warrant. (RP I, 18)

Detective Tim Weed assisted with the service of the search warrant. (RP II, 32-33ff) When the team entered Mr. Haggin’s room, which had been secured since the incident, (RP entire trial), they saw the crawl space hatch was open. (RP II, 35) A number of items of drug paraphernalia were found in that bedroom. (RP II, 36-38) Two pistol magazines were brought up from the crawlspace. (RP II,

41) Shotgun shells were also brought up from the crawlspace. (RP II, 43)

There was a box from a Smith and Wesson handgun lying open but gunless in that bedroom between the bedroom door and the open crawlspace. (RP II, 45-49, 144-146). The box had paperwork behind the foam and a spent cartridge in it. (RP II, 45-47, RP IV, 87, 149-150)

There was also a shotgun that Detective Houck brought up from the crawlspace. (RP II, 49, 150) The shotgun was sitting with tools and items all piled at the entrance to the crawlspace in an area no bigger than 4 feet by 4 feet. (RP II, 150-151) It was a Mossberg 20 gauge shotgun. (RP II, 51)

When Haggin was arrested many hours later, he did say the methamphetamine paraphernalia was all his. (RP II, 58) When questioned about the shots fired, he did not directly deny firing a gun, but kept saying, "If I fired a gun, there would be evidence." (RP II, 57) He said nothing about anyone else having or firing a gun. (RP II, 57) Police looked for the pistol but never found it. (RP II, 62) They did eventually find one shell casing consistent with a Smith and Wesson 9 mm handgun, in the brush of the passenger side of the road that Haggin had been traveling on. (RP II, 63)

Palm prints were found on the shotgun. (RP IV, 114, 122, RP II, 171)

Detective Weed went to get a palm print (with a court order) from Mr. Haggin to compare with the print on the gun. (RP II, 66) Mr. Haggin had not wanted to give palm prints. (RP II, 124) Haggin was present when the court ordered him to do it. (RP IV, 113, 122) But between the time the court order was issued and the time the detective went to get the prints, Mr. Haggin, who was in jail, suddenly had fresh cut marks on his palms. (RP II, 67-68, 124) When a corrections officer asked him how he got the cuts, Haggin said he fell out of the shower and hurt his hand. The corrections officer looked and there was nothing to cut his hands. (RP II, 127-128)

Also, in Haggin's conversation with the officers, he was familiar with the shotgun. (RP II, 74) He wouldn't say yes or no about firearms, but wanted to know what evidence the detective had first. (RP II, 76-77) Haggin also seemed to know a lot about the empty 9 mm firearm case, telling the court what was behind the foam. (RP IV, 87)

Fred Krueger, Jr. testified that he was living at a house owned by his parents. (RP I, 65) He had Eric Haggin living with him for a little over three weeks by the time of this event. (RP I, 66) He said the crawl space was accessed through the closet of Eric's bedroom (RP I, 66) and that he had only ever been

there once when the pipes broke, and that was when he moved in, not recently. (RP I, 67, RP IV, 116) He described a dispute between Laura and the defendant over a broken cell phone, which was going on before he left for work on that morning of June 8. (RP I, 67-68) He got a call later on at work from Laura, crying uncontrollably before the phone went dead. (RP I, 69) Then he called Eric, who told him it was no big deal. (RP I, 69) Eric called him later and mentioned that he had left the house and Laura had called the police on him. (RP I, 70) Fred called a friend to go over to the house, and when the friend did, the police were there. (RP I, 71) For the next period of time, he spoke with Laura, with the police, with his mother, and with friends about what was going on. (RP I, 76) Krueger testified that to his knowledge, there were no guns in the house. (RP I, 78) He also testified that he kept nothing in the crawl space. (RP I, 78-79, RP IV, 115) In fact, he said that neither he nor his father nor anyone else besides Eric was keeping anything in that crawl space. (RP IV, 115, (RP II, 11) He said he owned a Mossberg 20 gauge shotgun back in 2001. (RP I, 79) He had not seen it since 2001. (RP I, 79) Neither Krueger nor anyone in his family ever owned a Smith and Wesson 9 mm handgun. (RP II, 3) He never went in Eric's room while Eric was staying there. (RP II, 3), but he was aware Eric was storing some

tools and things in the crawl space, since Eric had asked permission to do that.

(RP II, 4)

After a trial, the defendant was convicted by the jury of Unlawful Possession of a Firearm in the First Degree, Assault in the Fourth Degree, and Possession of Methamphetamine. (CP 68-79) The jury acquitted Mr. Haggin of Assault in the First Degree, but was a hung jury on Assault in the Second Degree with a Deadly Weapon. (CP 68-69). The jury was given a unanimity instruction, as cited by the defense:

“The State alleges that the defendant committed the act of Unlawful Possession of a Firearm 1 Degree with multiple firearms. To convict the defendant, one particular act of knowing possession of a firearm must be proved beyond a reasonable doubt, and you must unanimously agree as to which act has been proved. You need not unanimously agree that the defendant committed all the acts of Unlawful Possession of a Firearm.” (CP 36)

This appeal followed.

ARGUMENT

A. There was sufficient evidence to convict Eric Haggin of Unlawful Possession of a Firearm in the first Degree on June 8, 2009.

The standard for review when sufficiency of the evidence is questioned, is whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, when the evidence is viewed in the light most favorable to the State. State v. Bergeron, 105 Wn. 2d (1985). A challenge to the sufficiency of the evidence to support a criminal conviction admits the truth of the State's evidence and all inferences that can be reasonably drawn there from. All reasonable inferences must be drawn in favor of the State and most strongly against the defendant. State v. Salinas, 119 Wn. 2d 192 (1992).

In State v. Roth, 131 Wn. App. 556, the court further elucidated "The appellate court does not determine whether *it* believes that the evidence at trial established guilt beyond a reasonable doubt. Rather, the pertinent question is whether any rational trier of fact could have found the essential elements after viewing the evidence in the light most favorable to the State. "State v. Green, 94 Wash.2d 216, 221, 616 P.2d 628 (1980). When there is substantial evidence, and

when the evidence is of such a character that reasonable minds may differ, it is the function and the province of the jury to weigh the evidence, determine the credibility of the witnesses, and decide disputed questions of fact. State v. Theroff, 25 Wash.App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wash.2d 385, 622 P.2d 1240 (1980). This court must defer to the determinations of the trier of fact on such issues. State v. Fiser, 99 Wash.App. 714, 719, 995 P.2d 107 (2000). In reviewing the sufficiency of the evidence, circumstantial evidence is not considered any less reliable than direct evidence. State v. Delmarter, 94 Wash.2d 634, 638 (1980).”

In assessing the sufficiency of the evidence the trial court must consider all evidence presented to the jury. “Individual pieces of evidence, insufficient in themselves to prove a point, may in cumulation prove it. The sum of an evidentiary presentation may well be greater than its constituent parts.” Bourjaily v. United States, 483 U.S. 171, 107 S. Ct. 268, 93 L. Ed 2d 246 (1987)

So what was the evidence that the jury considered in this case? There were two guns discussed throughout the trial. Either one could legitimately have formed the basis for the jury’s verdict.

There was ample testimony by three eyewitnesses that placed a gun in Mr.

Haggin's hand. Jose Macias, the eleven year old, described a black semi-automatic gun, Laura Patino described for the police the black semi-automatic gun, and Melissa Orozco described a black semi-automatic gun. They all said they saw it in Haggin's hand when he was shooting. Ms. Orozco said he was shooting in the air. It is entirely possible, since no bullet holes were found in the victim's car, that the jury could have concluded that Mr. Haggin may have unlawfully displayed the firearm or even have shot the firearm recklessly, without agreeing whether there was an intentional assault. Indeed, the fact that the jury hung on an assault in the second degree suggests that someone or some people on the jury believed Mr. Haggin actually intentionally assaulted Laura with it. Mr. Haggin, of course, said he would not shoot toward a car with his son in it. (RP IV, 100) He also said he did not assault his fiancée. However the jury disbelieved him on that and convicted him of an Assault 4. (CP 70) It is entirely possible that the jury decided to adopt Ms. Orozco's version of "shooting in the air" (RP III, 7), though believing that she obviously minimized her culpability. Moreover, the fact that all three person had the same description of the gun could well convince the jury that he had it in his hand, whether he was trying to assault Laura or not. Along with that was the fact that his room had been left in a hurry with the cover

to the crawlspace open and an open but empty black Smith and Wesson nine millimeter gun box sitting open between the crawlspace and the door. (RP II, 35-49) The jury also surely noticed that Mr. Haggin appeared quite familiar with the gun case itself. The jury was entitled to believe that Haggin had grabbed the gun from the box in the crawl space and left the house with it in his backpack. Haggin said over and over that he had a gun with him, and he even had his hand in his backpack when he said he had it. (RP IV, 42) The jury was entitled to believe he did possess it.

There is another gun, however, that was also the subject of much testimony, and the jury had sufficient evidence, with all inferences taken in a light most favorable to the State, to determine that Mr. Haggin was in constructive possession of that gun.

The Mossberg 20 gauge shotgun was found in a room that Mr. Haggin had control over. It was found in a crawlspace, amongst tools Mr. Haggin had asked if he could keep there. It was right by the crawlspace opening in the pile of Haggin's stuff. The jury was entitled to believe the permanent resident of the house, Mr. Krueger, who testified that nobody in his family stored anything in the crawlspace. (Nor is a crawlspace really a "natural choice" for storage in most

people's houses, even where there is no basement, as claimed by defense). Mr. Krueger had not even been in that crawlspace since the house was bought. He had lived there two years. (RP I, 65) Mr. Krueger and Mr. Haggin had been friends for many years, (RP I, 66) and Mr. Haggin had ended up in possession of at least one other gun of Mr. Krueger's back in 2001. It was no stretch to believe Mr. Haggin had ended up in possession of this one too. Mr. Haggin also showed knowledge of the gun's presence there when he was speaking to the officer, saying only to officers that it was registered to someone else. However possession of a gun does not mean the same thing as ownership. Mr. Haggin could be in constructive possession over a gun if he had dominion and control over that gun or the premises where the firearm was found. State v. Turner, 103 Wn. App. 515 (2000). Mr. Krueger testified and the jury was entitled to believe, that he did not go into that room while Mr. Haggin stayed there, and that he had no knowledge of any guns in the house.

Moreover, the jury was not blind to the fact that when the State sought palm prints to match a print found on the shotgun, Mr. Krueger willingly complied and Mr. Haggin did not. And when an order was sought compelling Mr. Haggin to give his palm prints, his palms became cut up between the time of the

order and the time that the detective showed up to take the prints. The jury was entitled to make inferences from that piece of evidence strongly against the defendant and in favor of the State. State v. Salinas, (above). It was up to the jury to determine Mr. Krueger's credibility as opposed to Mr. Haggin's, and to view the circumstances of the shotgun's placement with Mr. Haggin's other items as evidence that he constructively possessed the gun. Thus there was sufficient evidence that a reasonable or rational trier of fact could use to convict Mr. Haggin of possession of that shotgun.

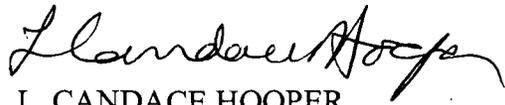
CONCLUSION

Since there were three eyewitnesses who placed a black semi-automatic pistol in Mr. Haggin's hand, and the jury was entitled to believe that the State did not prove an intentional element of assault with a deadly weapon, while still finding that he possessed the weapon and waved it around or shot it in the air, there was sufficient evidence for a jury to convict Mr. Haggin of Possession of that firearm.

Since the shotgun was found accessed in a room that Mr. Haggin and only Mr. Haggin occupied, in a crawlspace that the long-term resident of the house said was not used by himself or anyone else besides Mr. Haggin to store things in, and since the shotgun was found with things that Mr. Haggin had asked permission to store, and since Mr. Haggin's palms suddenly became cut up when Mr. Haggin was ordered to provide a palm print to match one found on the shotgun, there was sufficient evidence for a jury to convict Mr. Haggin of constructive possession/dominion and control over that shotgun.

DATED this 16th day of August, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. Candace Hooper". The signature is written in a cursive style with a large initial "L" and a long, sweeping underline.

L. CANDACE HOOPER
WSBA #16325
Deputy Prosecuting Attorney