

FILED

JAN 10 2012

CLERK OF SUPERIOR COURT
SPOKANE COUNTY
SPOKANE, WASHINGTON

30111-7-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JACOB S. BECK, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Andrew J. Metts
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I.

APPELLANT'S ASSIGNMENT OF ERROR

- A. The State's evidence was insufficient to support Jacob Stephan Beck's conviction of second degree assault.

II.

ISSUE PRESENTED

- A. Did the State present sufficient evidence that the defendant intended to assault Dep. Whapeles?

III.

STATEMENT OF THE CASE

For the purposes of this appeal, the State accepts the defendant's version of the statement of the case.

IV.

ARGUMENT

When analyzing a sufficiency of the evidence claim, the court will draw all inferences from the evidence in favor of the State and against the defendant. *State v. Joy*, 121 Wn.2d 333, 339, 851 P.2d 654 (1993). The reviewing court will defer to the jury on the credibility of witnesses and

the weight of the evidence. *State v. Bonisio*, 92 Wn. App. 783, 794, 964 P.2d 1222 (1998), *review denied*, 137 Wn.2d 1024 (1999). Even if an appellate court is convinced that a verdict is incorrect, that court will not gainsay the verdict of the jury. *Burke v. Pepsi-Cola Bottling Co.*, 64 Wn.2d 244, 391 P.2d 194 (1964).

Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

“The fact that a trial or appellate court may conclude the evidence is not convincing, or may find the evidence hard to reconcile in some of its aspects, or may think some evidence appears to refute or negate guilt, or to cast doubt thereon, does not justify the court’s setting aside the jury’s verdict.” *State v. Randecker*, 79 Wn.2d 512, 517-18, 487 P.2d 1295 (1971).

“...We do not retry factual questions.” *State v. Mewes*, 84 Wn. App. 620, 622, 929 P.2d 505 (1997). Despite this holding, the defendant wishes this court to retry this case.

The crux of this appeal is a factual one, not a legal one. The defendant wishes this court to retry the facts and change the jury’s conclusions. The defendant grounds his arguments completely on the claim that the defendant’s collision with the police cruiser was a total accident caused by the defendant’s excessive speed and the road

conditions. While calling the collision an “accident” the defendant candidly admits that the reason he was driving in a manner ill-suited to the conditions was that he was running from another police officer behind him. These facts alone would seem to preclude an “accident” claim as the defendant chose to drive insanely. There are more facts that make it impossible for the collision to have been an accident.

As Ofc. Lesser began the chase of the defendant, he activated his emergency lights and siren, but the defendant refused to stop. RP 190. At the intersection of Fancher and Broadway, the defendant did not attempt to slow down or stop. RP 190. The officer saw no brake lights activated on the defendant’s car and the defendant ran through the red light. RP 190.

The defendant would have this court believe that his actions were accidental. This is an absurd position to take. It is impossible to accidentally run from pursuing police units for miles and run a red light without even attempting to stop. The condition of the roads would have little effect on the stopping ability of a car which has not applied its brakes.

According to officer Lesser, the defendant cut into the turn lane and headed straight at the stopped patrol car of Dep. Whapeles, who was blocking traffic at the time. Dep. Whapeles was stopped, blocking traffic with his emergency lights on. RP 191. Ofc. Lesser saw the defendant cut

into the turn lane and drive straight at Dep. Whapeles' patrol car. RP 191. Ofc. Lesser testified that the defendant did not apply his brakes when he entered the intersection. RP 192.

Officer Lesser testified that it appeared to him that the defendant had "...a very clear lane of travel." RP 192. "All that he would have had to do was cut back and he could have continued going Westbound on Sprague." RP 192.

The defendant argues that his collision with Ofc. Whapeles vehicle was an "accident." "Accident" is defined by Black's Law dictionary as, "An event happening without any human agency." Black's Law, 5th edition (1979). The word "accident" has no application to any of the events in this case. The defendant's car did not take actions by itself. Every single action of the defendant's car occurred because of the purposeful action of the defendant. From driving 55-60 mph on an icy street, running red lights, failing to stop for police, to colliding with two vehicles -- the actions were intentional. Each action of the defendant's car was a result of "a human agency" which removes the possibility that the various crimes committed by the defendant were "accidents."

Jury instruction No. 9 states that: "an assault is an act, with unlawful force, 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.” RP 251-252. The same instruction further states: “An assault is also an act, with unlawful force, 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. RP 252.

Plugging the facts into the instruction, the jury had to find that the defendant used unlawful force (*i.e.* a deadly weapon, the car) to inflict bodily injury done with intent to inflict bodily injury on Dep. Whapeles, tending but failing to accomplish it and accompanied with the apparent present ability to cause bodily injury.

Or, the defendant acted with intent to create in Dep. Whapeles apprehension and fear of bodily injury and which actually created in Dep. Whapeles such fear of bodily injury.

The resolution and application of the facts to the jury instructions was locked into place with the defendant’s own testimony. The defendant testified that he struck the deputy’s car. The defendant minimized the amount of contact during his testimony, but the testimony of the police officers was that the defendant struck Dep. Whapeles’ car hard enough to spin it completely around. Any normal person would, in the same

circumstances, experience fear and apprehension. In fact, on appeal the defendant does not contest most of the jury's conclusions regarding the elements of the crime of second degree assault on Dep. Whapeles.

The defendant only contests the "intent" element. The defendant claims he was in a "panic" and it was the road conditions that caused him to slide into Dep. Whapeles car. This claim does not fit well with the testimony of both police officers involved in the chase, to the effect that the defendant had a clear avenue ahead and chose to steer into Dep. Whapeles' car. There was also the testimony of Ofc. Lesser that the defendant did not apply his brakes prior to striking the deputy's car.

The defendant argues that it makes no sense that while trying to elude the pursuing police vehicles, the defendant would also intentionally try to hit Deputy Whapeles car. Brf. of App. 6. Actually, there was an obvious rationale for the collision. The defendant intended to disable Dep. Whapeles without disabling his own car in the process. The defendant was already being pursued by one police car, disabling a second police car clearly would lessen the chances of being captured.

V.

CONCLUSION

For the reasons stated, the conviction of the defendant should be affirmed.

Dated this 10th day of January, 2012.

STEVEN J. TUCKER
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Andrew J. Metts", written over a horizontal line.

Andrew J. Metts #19578
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