FILED
May 4, 2016
Court of Appeals
Division III
State of Washington

No. 33218-7-III

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

STATE OF WASHINGTON,
Respondent,

v.

ERIK JON CSIZMAZIA,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KLICKITAT COUNTY, STATE OF WASHINGTON
Superior Court No. 14-1-00164-1

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the State present sufficient evidence to support the conviction of Assault in the Third Degree of a Law Enforcement Officer?

B. STATEMENT OF THE CASE

On December 29, 2014, the defendant was charged by information with one count of Assault in the Third Degree of a Law Enforcement Officer. The assault occurred while he was being held in custody under a different cause number. At Omnibus, defendant's competency to stand trial was not raised (CP 24-25), presumably because competency had been established in the matter he was originally detained on.

Sergeant Mario Saucedo was employed by the Klickitat County Sheriff's Department, and was on duty as Corrections Officer on December 26, 2014, around 8:00 am, performing cell checks (VRP 86-89). Sergeant Saucedo had contact with the defendant, who was being held in holding cell two, because he had an issue with another inmate (VRP 89).

The defendant was filling out a statement form, but wanted a different form. The defendant had the statement form for someone who is accused of a crime, and the defendant wanted a general statement form (VRP 120). The defendant asked Sergeant Saucedo for the other form, but became agitated when Sergeant Saucedo would not read his statement (VRP 91).

As Sergeant Saucedo attempted to leave holding cell two, the defendant lunged at him, grabbing his neck with one hand, and his shoulder with the other hand, and pushed him out of the cell (VRP 91,93). Sergeant Saucedo called for backup, and the defendant started throwing punches, which Sergeant Saucedo attempted to block. Sergeant Saucedo was holding a device that was used to monitor when and by whom cell checks were done, and he used it to strike the defendant twice; however, the defendant would not stop striking Sergeant Saucedo, including striking him on the side of the head, nose, and upper lip (VRP 91-92).

Sergeant Saucedo struggled to gain control of the defendant for approximately forty-five seconds, when he was finally able to force the defendant to the ground by his legs and forced him to the ground. The defendant hit his head on the ground. (VRP 94). By that time, corrections officer (CO) Tim Curran arrived to assist. CO Curran struck the defendant with the palm of his hand and held the defendant's head down (VRP 101). Once contained, the defendant gave up fighting, and CO Curran took the defendant, by the legs, into a crisis cell located next to holding cell two (VRP 94-95, 96).

After the incident, the defendant refused medical attention, even though he was bleeding (VRP 96-97). Sergeant Saucedo was checked out by EMT's, and went to the hospital for closer examination, as advised by the EMT's. (VRP 97).

On March 4, 2015, a jury trial commenced (VRP 61). On March 5, 2015, the jury returned a verdict of guilty (CP 45). The defendant was sentenced to forty-three months, a sentence within the standard range, and Legal Financial Obligations on March 16, 2015 (VRP 48-49, CP 47-53). On April 9, 2015, the Judgment and Sentence was amended to properly reflect community custody provisions authorized by statute (CP 70-76).

On March 16, 2015, the defendant filed this appeal (CP 56-66).

C. ARGUMENT

1. The State presented sufficient evidence to support the conviction of the defendant.

"The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the jury's verdict, any rational jury could find the essential elements of a crime beyond a reasonable doubt." *State v. McCreven,* 284 P.3d 793, 809, 170 Wn.App.444, (2012) (emphasis added) (citing *State v. Johnson*, 159 Wn.App. 766, 744, 247 P.3d 11(2011) (internal citations omitted).

A sufficiency review "addresses whether 'the government's case was so lacking that it should not have even been submitted to the jury.' *McCreven* 284 P.3d at 809, quoting *Burks v. United States*, 437 U.S. 1, 16 (1978). The Supreme Court further elaborates that "a reviewing court makes a limited inquiry tailored to ensure that a defendant receives the minimum that due process requires: a 'meaningful opportunity to defend'

against the charge against him and a jury finding of guilt 'beyond a reasonable doubt" *Id.* (emphasis added) (quoting *Jackson v. Virginia*, 443 U.S. 307, 314-315 (1979)). The Supreme Court goes on to state that a narrow sufficiency review does not override the jury's role concerning how the jury weighs the evidence or what inferences they draw from evidence. *Id.*

The Supreme Court has repeatedly followed this reasoning. Recently, *Musacchio v. United States*, an opinion decided January 25, 2016, confirms that a "sufficiency challenge is for the court to make a 'legal' determination whether the evidence was strong enough to reach a jury at all" *Musacchio v. United States*, 577 U.S. _____ (2016), Slip Opinion No. 14-1095, quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

This reasoning from *Musacchio* is supported in Washington case law. The job of the court conducting a sufficiency review is not to "reweigh the evidence and substitute judgment" but rather "because [the jury] observed the witnesses testify first hand, we defer to the jury's resolution of conflicting testimony, evaluation of witness credibility, and decisions regarding the persuasiveness and the appropriate weight to be given to the evidence." *State v. Green*, 94 Wn. 2d 216, 221. 616 P.2d 628 (1980).

All reasonable inferences that could be made from the evidence "must be drawn in favor or the verdict and interpreted strongly against the defendant." *State v. Salinas,* 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

The "jury is the sole and exclusive judge of the evidence." *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999).

In the case at hand, the defendant argues that he could not form the requisite intent to assault his corrections officer. This argument is not based on any evidence submitted at trial, other than the defendant's own testimony. The appellant brief argues that "[n]o rational trier of fact could find the essential element of intent in light of [the defendant's] testimony."

The defendant argues that this is separate from being found competent. The appellant brief points out that the defendant was found competent to stand trial. The fact that the defendant was evaluated was raised during cross-examination of the defendant. The defendant acknowledges that he was evaluated and that he was found competent. The Deputy Prosecuting Attorney pointed out that he had been evaluated and that the evaluator concluded that the defendant was a malingerer - "persons who deliberately pretend to have an illness or disability in order to avoid punishment" (VRP 131).

That testimony alone would provide a basis for a trier of fact to be able to conclude that the defendant is able to form the intent to assault a corrections officer.

The defendant has also provided the court with other examples showing he can form the intent to do harm. The defendant appeared in court on January 20, 2015, for his Omnibus hearing. The defendant raised the

question of lowering bail. The Judge instructed the defendant to talk to his lawyer, who could bring a motion, and then the following conversation:

JUDGE:	It does not help that you wrote whatever you wrote on your uniform
DEFENDANT:	Why? That's my gang signs.
JUDGE:	Okay, I understand but that is highly, highly offensive to many people in the community.
DEFENDANT:	I will not stop until every Jew on planet earth is dead ---
COUNSEL:	Let's not ----
DEFENDANT:	And is wiped from the earth (VRP 24-25)

As it is shown, the defendant has shown that he can form the intent to commit violent crimes and assaults against persons.

When conducting a sufficiency of the evidence review, the only question should be if there was enough evidence to send to the jury. It is clear that based on the statements of the defendant, a rational trier of fact could find that he has the ability to form the intent to assault a corrections officer.

While it may be true that the defendant made statements during his testimony that could be determined to be irrational, it is the jury's duty to determine the credibility of testimony. Only the jury can make the determination on if the defendant is unreliable, or determine that they agree with the representations of the evaluator and conclude that the defendant

was a malingerer. Washington law clearly stands for the premise that it is not the job of the reviewing court to make determinations on the evidence. See *State v. McCreven*, 170 Wn.App.444, 284 P.3d 793(2012); *State v. Johnson*, 159 Wn.App. 766, 247 P.3d 11(2011); *State v. Salinas*, 119 Wn.2d 192, 829 P.2d 1068 (1992); *State v. Bencivenga*, 137 Wn.2d 703, 974 P.2d 832 (1999); *State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980); *State v. Walton*, 64 Wn.App.410, 824 P.2d 533 (1992); *Jackson v. Virginia*, 443 U.S. 307, 314-315 (1979).

Here, there was enough evidence to send to the jury, and the jury, after weighing all the testimony and evidence, returned a verdict of guilty, and that verdict should stand.

D. CONCLUSION

Based on the foregoing arguments, the convictions should be affirmed.

Respectfully submitted this 4th day of May, 2016.

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