

66836-6

66836-6

NO. 66836-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

RICHARD SWEAT,

Appellant.

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STATE OF WASHINGTON  
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MARIANE SPEARMAN

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**BRIEF OF RESPONDENT**

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**A. ISSUES**

1. The legislature authorized the imposition of an exceptional sentence for a pattern of domestic violence against multiple victims. The trial court found that Sweat had a prolonged history of abuse with five different victims prior to the assault in the present case. Was there sufficient evidence that Sweat had a pattern of domestic violence against multiple victims to justify an exceptional sentence?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The defendant, Richard Sweat, was charged with assault in the second degree - domestic violence. CP 1. The State also charged an aggravating factor that Sweat had a pattern of domestic violence against multiple victims. CP 1-2. The State alleged that on September 26, 2010, Sweat punched his girlfriend, Kellie Kensworthy, in the face causing a fracture to her orbital socket. CP 4-5. Sweat waived his right to a jury trial and requested a bench trial. CP 11; 1/10/11 RP 48-50. Sweat then asked to fire his attorney and proceed pro se. CP 12-13; 1/10/11 RP 62-72. The trial court granted Sweat's request and he represented himself.

1/10/11 RP 66-72. The court found Sweat guilty of assault in the second degree, and found the aggravating factor that he had a pattern of domestic violence against multiple victims. CP 138-44. Sweat was sentenced on March 4, 2011. CP 113-21. The court imposed an exceptional sentence of 84 months confinement. CP 113-21.

## **2. SUBSTANTIVE FACTS**

Richard Sweat met Kellie Kensworthy in Seattle and they began a dating relationship. 1/10/11 RP 137. They were together for approximately four weeks. 1/12/11 RP 292. Two weeks after they began dating Kensworthy moved in with Sweat. 1/12/11 RP 292. Sweat lived in a shed at the home of relatives. 1/12/11 RP 292, 297. Soon after the relationship began Kensworthy noticed that Sweat was becoming controlling. 1/12/11 RP 292.

On the morning of September 26, 2010, Kensworthy and Sweat had an argument. 1/12/11 RP 294, 299. Sweat told Kensworthy that he would "smack her in the face" if she kept talking. 1/12/11 RP 294. Sweat then struck Kensworthy in the left eye with his hand. 1/12/11 RP 294, 296. Kensworthy lost

consciousness. 1/12/11 RP 294. When she awoke she could not see out of her left eye for about thirty minutes. 1/12/11 RP 294.

Sweat became apologetic and began asking Kensworthy to make up a story to tell his relatives. 1/12/11 RP 296. Sweat told Kensworthy to say that she fell out of bed and hit her eye on a box. 1/12/11 RP 297. Kensworthy walked to the hospital with Sweat. 1/10/11 RP 132; 1/11/11 RP 183. Nurse Shawna Moorehead took Kensworthy to an examination room. 1/11/11 RP 183. Kensworthy was upset and crying. 1/11/11 RP 184. She initially reported that she fell off her bed and hit her eye on a dresser. 1/11/11 RP 186. She later said Sweat caused her injuries and asked the hospital staff to call the police. 1/11/11 RP 187-88; 1/12/11 RP 301.

Dr. Luther Richey diagnosed Kensworthy with a fractured orbital socket. 1/11/11 RP 212-13. There was no laceration near the injury leading the doctor to conclude it was unlikely to have been caused by a fall. 1/11/11 RP 218.

Police contacted Sweat in the hospital waiting room. 1/10/11 RP 134. He was nervous and agitated, asking why the police were there. 1/10/11 RP 135. When Officer Linder told Sweat he was investigating a domestic violence assault, Sweat denied he had any argument with Kensworthy. 1/10/11 RP 136. Sweat told police that

Kensworthy injured herself by falling out of bed and hitting her eye on a dresser. 1/10/11 RP 136. Officer Farrior went to Sweat's residence and took photographs. 1/11/11 RP 251-52. He noted that there was no dresser next to the bed. 1/11/11 RP 253-54.

The State presented evidence that Sweat had an extensive history of domestic violence with other women. The trial court considered five prior convictions Sweat accumulated from 1997 until 2006. 1/12/11 RP 424. Sweat was convicted of assault in the second degree with sexual motivation in 1997, unlawful imprisonment and assault in the third degree (domestic violence) in 2005, and again in 2006. 1/12/11 RP 423-24. Sweat was convicted twice for felony riot (domestic violence) in 2006. 1/12/11 RP 423-24. Each of Sweat's prior convictions had a different woman as the victim. 1/12/11 RP 423-24. The trial court found that Sweat had a prolonged history of physical, sexual, and psychological abuse of multiple women.

**C. ARGUMENT**

**1. AN EXCEPTIONAL SENTENCE IS AUTHORIZED IF AN OFFENDER ABUSES MANY DIFFERENT WOMEN.**

Sweat contends that the Sentencing Reform Act (SRA) only authorizes an exceptional sentence when there is a pattern of abuse against a single victim. Sweat's argument is not supported by the plain language of the statute or the statute's history.

Issues of statutory construction are reviewed de novo. State v. Lilyblad, 163 Wn.2d 1, 6, 177 P.3d 686 (2008). If the plain words of a statute are unambiguous, the Court need not inquire further. State v. Gonzalez, 168 Wn.2d 256, 263, 226 P.3d 131 (2010). The Court derives the meaning of an unambiguous statute from the wording of the statute itself. State v. Tili, 139 Wn.2d 107, 115, 985 P.2d 365 (1999). The Court assumes the legislature means exactly what it says. W. Telepage, Inc. v. City of Tacoma Dep't of Fin., 140 Wn.2d 599, 608-09, 998 P.2d 884 (2000). The legislature is presumed to use only essential words and each word must be accorded meaning and interpreted so that no portion of the statute is rendered meaningless or superfluous. State v. Beaver, 148 Wn.2d 338, 343, 60 P.3d 586 (2002); State v. Roggenkamp, 153 Wn.2d 614, 624, 106 P.3d 196 (2005). A statute is considered

ambiguous only if it is susceptible to more than one reasonable interpretation. State v. Jacobs, 154 Wn.2d 596, 600-01, 115 P.3d 281 (2005).

A trial court may impose a sentence outside of the standard sentence range for an offense if it finds, considering the purpose of the SRA, that there are substantial and compelling reasons justifying an exceptional sentence. RCW 9.94A.535. The legislature has created an exclusive list of aggravating factors that may justify an exceptional sentence above the standard range. A pattern of domestic violence abuse is such an aggravating factor:

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time.

RCW 9.94A.535(3)(h)(i) (emphasis added). The plain language of the statute states that the pattern of abuse can involve the same victim, or it can involve multiple victims. The statute should be interpreted so each word is accorded meaning, and no portion of the statute is rendered meaningless or superfluous. Beaver, 148 Wn.2d at 343; Roggenkamp, 153 Wn.2d at 624. When sentencing

an offender for a current offense, the court may consider prior abusive incidents, and limiting the pattern of abuse to a single victim would render the words "or multiple victims" meaningless.

Sweat argues that the term "victim" is defined in the SRA and limits the pattern of abuse to a single victim. The SRA defines a victim as:

(53) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

RCW 9.94A.030(53). Sweat contends that the definition of victim limits it to those harmed "as a direct result of the crime charged."

Brief of Appellant at 8. Sweat's argument fails for two reasons.

First, the legislature did not limit the pattern of abuse to a single victim, but expanded it to include "victim or multiple victims."

RCW 9.94A.535(3)(h)(i). While the term victim is defined, the term "multiple victims" is not. The Court may discern the plain meaning of nontechnical statutory terms from their dictionary definitions.

State v. Cooper, 156 Wn.2d 475, 480, 128 P.3d 1234 (2006).

Multiple means more than one. Webster's Third New International Dictionary. Second, the definitions of the SRA apply "[u]nless the context clearly requires otherwise." RCW 9.94A.030.

In the context of a pattern of abuse in the aggravating factor, the statute clearly goes beyond the "result of the crime charged" that is at the core of the definition of a "victim." Most of the aggravating factors refer to the "current offense" or "the offense" to indicate that the aggravator focuses on the current offense rather than some other offense or incident. See RCW 9.94A.535(a)-(aa). The pattern of domestic violence aggravator is no different, it requires that the "the *current offense* involves domestic violence" and that "*the offense* was part of an ongoing pattern." RCW 9.94A.535(3)(h)(emphasis added). The "ongoing pattern" must be manifested by "multiple incidents over a prolonged period of time." Id. The charging document identified the current offense, which included the date, whereas the ongoing pattern clearly reaches back in time to other incidents and victims. Thus, it would make no sense to say that the "victim" definition necessarily ties the aggravator to this offense when the whole purpose of the aggravator is to go beyond this offense. In other words, Sweat's interpretation of the statute would defeat its manifest purpose. Sweat's attempt to graft language from the definition of a victim to limit the pattern of abuse to a person harmed "as a direct result of

the crime charged" is contrary to the plain meaning of the pattern of domestic abuse aggravating factor.

In 2010, the legislature amended the statute to add "or multiple victims." Laws 2010, ch. 274, § 402.<sup>1</sup> The legislature clearly intended the additional language to have meaning beyond the SRA's definition of "victim" as tied to a particular charged case.

One might argue that multiple victims could mean more than one person harmed as a direct result of the current offense. However, the language of the statute clearly demonstrates the intent of the legislature to look beyond the charged offense and consider "multiple incidents over a prolonged period of time." The phrase must refer to separate events. Thus, the victim cannot be limited to the victim or victims in the charged offense.

Furthermore, the statute as a whole does not support Sweat's interpretation. The legislature demonstrated the ability to expand or limit categories of victims for purposes of a pattern of abuse. For example, the SRA authorizes a similar aggravating factor for a pattern of sexual abuse (non-domestic violence), but specifically limited the pattern of abuse to the same victim:

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<sup>1</sup> The amendment became effective June 10, 2010 prior to the date of the crime on September 26, 2010.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

RCW 9.94A.535(3)(g)(emphasis added). The legislature's use of the "same victim" for the pattern of sexual abuse is in sharp contrast to its use of an ongoing pattern of abuse of "multiple victims" language as applied to the pattern of domestic violence aggravator. The legislature clearly could have limited the pattern of domestic violence abuse to the same victim, but instead chose to explicitly expand it to an "ongoing pattern" and "multiple victims." The plain language of RCW 9.94A.353(3)(h)(i) authorized the trial court to impose an exceptional sentence for a pattern of domestic violence with multiple victims.

The evidence at trial established that Sweat had a long history with a clear pattern of domestic violence against multiple victims. The standard of review for determining the sufficiency of the evidence to sustain a criminal conviction is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980), citing Jackson v. Virginia, 443 U.S.

307, 316-20, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1970). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences drawn therefrom. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The same standard applies to a challenge to the sufficiency of the evidence to support an exceptional sentence. State v. Yarbrough, 151 Wn. App. 66, 96, 210 P.3d 1029, 1044 (2009).

The evidence in the present case proved that Sweat had five prior convictions for abusing five different victims. His history of abusing women spanned from 1997 until his present conviction in 2010. The trial court had ample evidence to find Sweat's offenses were part of an ongoing pattern of psychological, physical, or sexual abuse of multiple victims manifested by multiple incidents over a prolonged period of time. Sweat's argument to the contrary depends wholly on his statutory interpretation argument. However, if prior victims of Sweat's domestic violence may be considered there is plainly sufficient evidence.

The trial court had a legal and factual basis to impose an exceptional sentence. Sweat's sentence should be affirmed.

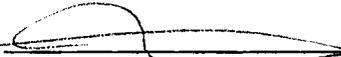
**D. CONCLUSION**

For the foregoing reasons, the State asks this Court to affirm  
Sweat's exceptional sentence.

DATED this 15<sup>th</sup> day of December, 2011.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Oliver Davis, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. RICHARD SWEAT, Cause No. 66836-6-I, 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.

    C. Brame      
Name  
Done in Seattle, Washington

    12/15/11      
Date 12/15/11