

68137-1

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NO. 68137-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JEFFREY BEASLEY,

Appellant.

FILED
STATE OF WASHINGTON
COURT OF APPEALS DIVISION I
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE REGINA CAHAN

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. Here, the defendant was charged with the crime of tampering with a witness and, amongst other things, told the victim not to respond to the subpoena and to flee to California when a material witness warrant was issued. Viewed in the light most favorable to the prosecution, could any rational trier of fact have found the essential elements of the crime beyond a reasonable doubt?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Defendant Jeffrey Beasley was charged by amended information with assault in the second degree - domestic violence with the history of domestic violence aggravating factor under RCW 9.94A.535(3)(h)(i), felony harassment - domestic violence with the history of domestic violence aggravating factor under RCW 9.94A.535(3)(h)(i), tampering with a witness - domestic violence, and five (5) counts of domestic violence felony violation of a court order.

CP 73-78. An instruction was also given on the lesser included charge to Count I, assault in the second degree, of assault in the fourth degree. CP 79-116. The jury found Beasley guilty of assault in the fourth degree, tampering with a witness, and all five (5) counts of violation of a court order. CP 117-20, 123. The jury found Beasley not guilty of assault in the second degree, but guilty of assault in the fourth degree and not guilty of felony harassment. CP 121-22. The trial court imposed a standard range sentence of 60 months and a consecutive misdemeanor sentence for the assault in the fourth degree, and Beasley appealed. CP 126-38.

2. SUBSTANTIVE FACTS

Beasley and Danitra Powell had a romantic relationship and lived together for some time. 2RP 364-66.¹ After a prolonged argument where Beasley accused Powell of cheating on him, and throughout the night of June 20 to 21, 2011, Beasley grabbed, punched, pinned, bit, threatened, and choked Powell. 2RP 371-91. The violence finally ended around 6 a.m. on June 21, 2011. 2RP 390-91.

¹ The Verbatim Report of Proceedings consists of three volumes, referred to in this brief as follows: 1RP (November 14, 2011); 2RP (November 15, 16, 17, 21, 22, 23, 28, and 30, 2011); and 3RP (November 29, 2011).

Powell and Beasley woke up around 5 p.m. on June 21, 2011. 2RP 391. Beasley began looking through Powell's phone but Powell knew he was not going to find what he was looking for. 2RP 392. Powell knocked out the screen of their bedroom window and fled to the neighbors. 2RP 392.

Powell first called her mother, Regina Pete. 2RP 302-07, 393. Pete heard Powell screaming, crying, and telling Pete to come get her. 2RP 307. Powell told her mother that she had to jump out the bedroom window because Beasley was beating on her. 2RP 305, 307.

Powell then called 911. 2RP 313-14, 393, 400-01. Powell saw Beasley leave before the police arrived. 2RP 394. The police documented numerous visible injuries on Powell. 2RP 203, 210-16, 254-63.

After providing a statement to the police, Powell went to stay with her mother. 2RP 394-95. Powell stayed with her mother for approximately a week but returned to Beasley after he told her that he missed her, loved her, and they needed to "work it out." 2RP 395-96.

After Beasley received papers summoning him to court on July 12th, Beasley asked Powell to go the police and change her

statement, or create a new statement that did not implicate him; Powell then gave a statement to Detective Metzger on July 11, 2011, in which she said what Beasley wanted her to say, according to her later testimony, even though it was not true. 2RP 265-66, 398-400.

On July 12, 2011, Beasley was arrested, arraigned, and booked into jail. CP 141-45. On that day the court also entered a pretrial domestic violence no-contact order that prohibited Beasley from contacting Powell; Beasley signed and received a copy of that order. 2RP 267-71, 496-97; CP 142-43. The order prohibited the defendant from contacting Powell by phone. 2RP 267-71, 496-98; CP 142-43.

Beasley was held in custody at the Regional Justice Center in Kent, Washington, and made numerous phone calls while there. 2RP 235-48. At trial, the State offered and admitted six of the jail calls made by Beasley while he was in custody from July 19 to July 31, 2011; those calls contained conversations between Beasley and Powell. Supp CP ____ (Exhibit 42); 2RP 235-48, 283-86, 310-13, 333-34, 366-70, 498-99. The calls were played for the jury and the jury was provided a transcript of the calls as a listening aid;

the transcript was marked as Exhibit 49. 2RP 321-23, 344, 346-47;

Supp CP ____ (Exhibit 49).

The conversations between Beasley and Powell in the jail calls contained the following exchanges:²

BEASLEY: ...Then he's talking about it going on trial, talking about um well its hard to beat these cases, especially if she gets on the stand...once she gets on the stand. I said well she's not, you know what I'm saying, I don't even think she's gonna be there, man.

POWELL: Uh-huh.

BEASLEY: You know what I'm saying. I got a right to face my accuser. Well he's like something, something uh he was saying. I was like look in order for her to get there she has to get a subpoena. If she doesn't get the subpoena...they can only issue 'em a material witness warrant uh warrant for 72 hours.

POWELL: Uh-huh.

BEASLEY: You know what I'm saying. If she went out of town, like California, they don't even extradite back.

POWELL: Yeah.

BEASLEY: You know what I'm saying for, for a material witness warrant.

Supp CP ____ (Exhibit 42); Supp CP ____ (Exhibit 49, page 16-17).

² In the actual transcript the names appear as MALE, FEMALE, and FEMALE 2. For ease of the reader here the speaker's actual name, as proved at trial, has been inserted. Beasley made some calls to his niece, Jennifer Beasley, who then connected Powell to the line. 2RP 333-35. To avoid confusion Jennifer Beasley is referred to as Jennifer.

BEASLEY: ...I don't know what's gonna go on, but I just hope she's careful. If she's not gonna show up I hope she's careful. Are you sure she's not showing up?

JENNIFER: Naw.

BEASLEY: Huh?

JENNIFER: Naw I ain't see her.

BEASLEY: Are you, are you guys sure that she's not showing up at the court?

POWELL: Yep.

BEASLEY: What?

POWELL: Yep.

Supp CP ____ (Exhibit 42); Supp CP ____ (Exhibit 49, page 32).

BEASLEY: Yeah, yeah. I bet you she does, but I don't know how. I don't know how because if she don't want to come all she has to do is not answer her subpoena. And then at the same time when they put the material witness warrant out all she has to do is not answer or take a trip to Cali or go to the uh drunk boxer's parents house. Huh? For a few days. Huh?

POWELL: Uh-huh.

BEASLEY: Goodness sakes. Goodness sakes it's too easy. You know what I'm saying.

POWELL: And yeah she don't, she don't have no plans, she don't have no plans on going.

BEASLEY: But um another thing is.

POWELL: What?

BEASLEY: She don't have no plans? If she, if she did come they're just going to treat like she's the um scared victim and [unintelligible] just get booked.

Supp CP ____ (Exhibit 42); Supp CP ____ (Exhibit 49, page 37).

BEASLEY: Okay. Only thing I know is the experiences that's I've been through and

I know my federal law. I know my 12th Amendment. It's either 12th Amendment, 10th Amendment, I can't remember, but if they looked at the amendments...is some in my second drawer at the house if you guys go by there...it explains you can't...you cannot...basically uh you have the right to face your accuser meaning that if your accuser does not show up there is no case. They have to dismiss, without an accuser there is not witness, there is no...

POWELL: Okay. Okay and that's fine. This...and I'm gonna tell you like this. Remember that you said that because she had no intention of ever...she doesn't have any intention on going up to the fucking court anymore...

Supp CP ____ (Exhibit 42); Supp CP ____ (Exhibit 49, page 49).

BEASLEY: ...and get an understanding. Um I mean it's just gonna have to...I guess, I guess you guys just watch out, you know what I'm saying. Make sure...if she wants to go she's gonna go and I just get cooked, but uh if she doesn't go then I mean I'm gonna be okay. But that's all...I guess it's all up to her because they, they if they can't deliver it or give her the subpoena she can't get in no trouble. But they can put supposedly a material witness thing out for her.

POWELL: Yeah.

Supp CP ____ (Exhibit 42); Supp CP ____ (Exhibit 49, page 60).

C. ARGUMENT

THE EVIDENCE WAS SUFFICIENT TO SUPPORT
BEASLEY'S CONVICTION FOR THE CRIME OF
TAMPERING WITH A WITNESS.

The evidence, viewed in the light most favorable to the prosecution, was sufficient and permitted a rational trier of fact to find the essential elements of the crime of tampering with a witness beyond a reasonable doubt because the evidence showed that Beasley told Powell, the victim of the assault and a witness, to provide a false account of the assault, to ignore her subpoena, to not appear for trial, and to hide or flee when a material witness warrant was issued to secure her appearance at trial.

The Washington State Supreme Court provided a statement of the standard to use when reviewing a claim of insufficiency of the evidence in State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970, 996-97 (2004).

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. Circumstantial evidence and direct evidence are equally reliable. Credibility determinations are for the trier of fact and are not subject to review. This court must defer to the trier of

fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.

Thomas, 150 Wn.2d 874-75 (citations omitted).

Here, Beasley only challenges the sufficiency of the evidence supporting his conviction for the crime of tampering with a witness. The elements of that crime, as noted in the jury instruction used at trial, are:

- (1) That during a period of time intervening between July 7, 2011, through July 31, 2011, the defendant attempted to induce a person to testify falsely or, without right or privilege to do so, withhold any testimony or absent himself or herself from any official proceeding; and
- (2) That the other person was a witness; and
- (3) That the acts occurred in the State of Washington.

CP 105 (instruction 22).

The State was required to prove that between July 7, 2011, through July 31, 2011, Beasley attempted to induce a person to do one or more of three things: (1) testify falsely, (2) withhold any testimony, or (3) absent himself or herself from any official proceeding. Here, in addition to the testimony of witnesses, six jail calls were admitted into evidence; these calls were made by Beasley starting on July 19, 2011, and ending on July 31, 2011, and contained conversations between him and Powell where he instructed her to not appear for trial and told her how to avoid a

material witness warrant by leaving the State. Supp CP ____ (Exhibit 42); Supp CP ____ (Exhibit 49, page 16-17, 32, 37, 49, 60); 2RP 235-48, 283-86, 310-13, 333-34, 366-70, 498-99.

Beasley did attempt to be vague in his conversations with Powell, and referred to her as “she” on some occasions, but he clearly communicated his desire that Powell not appear for trial. He discussed how at trial “its hard to its hard to beat these cases, especially if she gets on the stand...” and that if a material witness warrant was issued to secure her appearance at trial, all she would have to do is go to California, where they do not extradite back, or go to the “drunk boxer's parents house.” Supp CP ____ (Exhibit 42); Supp CP ____ (Exhibit 49, page 16-17, 37). Beasley even noted that he believed that “you have the right to face your accuser meaning that if your accuser does not show up there is no case.” Supp CP ____ (Exhibit 42); Supp CP ____ (Exhibit 49, page 49). The reasonable inference from these conversations is that Beasley was attempting to convince Powell not to appear for trial, which would have resulted in her withholding all of her testimony. Therefore, viewing the evidence in the light most favorable to the prosecution and taking all reasonable inferences therefrom, a reasonable trier of fact could have found an attempt to induce Powell to testify

falsely or withhold testimony or absent herself from the proceedings beyond a reasonable doubt.

Sufficient evidence was also presented as to the other elements of the crime. Powell was a witness, the victim of the originally charged assault, and testified at trial. CP 1-7, 73-78, 123; 2RP 362-467. The calls that Beasley made, which contained the primary evidence of the tampering with a witness charge, were all made from the jail in Kent, WA. 2RP 235-48. There was sufficient evidence presented such that a reasonable trier of fact could have found all the elements of the crime of tampering with a witness beyond a reasonable doubt. Beasley's claim fails.

Beasley argues that Powell "needed no persuasion to change her statements." However, his arguments ignore that tampering with a witness only requires the State to prove an attempt to induce, not that the attempt was ultimately successful. Beasley's attempts to tamper with Powell's testimony are clearly documented in the conversations between Beasley and Powell in the jail call recordings.

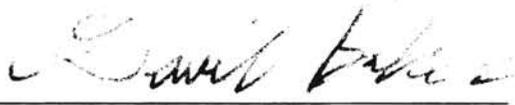
D. CONCLUSION

For all the foregoing reasons, the State asks this Court to affirm Beasley's conviction for the crime of tampering with a witness.

DATED this 20 day of September, 2012.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 

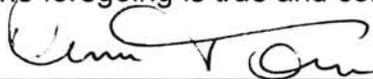
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STATE OF WASHINGTON
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Andrew P. Zinner, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., ^{certificate of mailing} 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent to be Sent to Court of Appeals, in STATE V. JEFFREY S. BEASLEY, Cause No. 68137-1-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.



Name Divina Tomasini
Done in Kent, Washington

9/20/12

Date