

NO. 70014-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

COLE W. PARMENTER,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA A. MACK

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

WESLEY C. BRENNER
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

STATE OF WASHINGTON
NO. 70014-6-I
MAY 23 11:10:12
M

TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
1. PROCEDURAL FACTS	1
2. SUBSTANTIVE FACTS	2
C. <u>ARGUMENT</u>	4
D. <u>CONCLUSION</u>	7

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Jackson v. Virginia, 443 U.S. 307,
99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)..... 4

Washington State:

State v. Alvarez, 128 Wn.2d 1,
904 P.2d 754 (1995)..... 4

State v. Fiser, 99 Wn. App. 714,
995 P.2d 107 (2000)..... 5

State v. Green, 94 Wn.2d 216,
616 P.2d 628 (1980)..... 4

State v. Salinas, 119 Wn.2d 192,
829 P.2d 1068 (1992)..... 5

Statutes

Washington State:

RCW 9A.36.041 5

Other Authorities

11 Wash. Prac., Pattern Jury Instr. Crim.
WPIC 35.50 (3d Ed) 5

A. ISSUE PRESENTED

Evidence is sufficient if, taken in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The State presented evidence that Cole Parmenter struck his sister, Shandel Parmenter, in the chest with his shoulder during an argument. Could a rational trier of fact have concluded that Cole Parmenter committed assault in the fourth degree?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On October 11, 2012, the State of Washington charged the appellant, Cole W. Parmenter, a juvenile, with one count of assault in the fourth degree for his actions on April 25, 2012. CP 1. This case proceeded to bench trial before the Honorable Barbara Mack. RP. After a fact-finding hearing held on February 5, 2013, the court found Cole Parmenter guilty as charged of one count of assault in the fourth degree. RP; CP 12-14. The court signed written findings of fact and conclusions of law in support of its verdict on March 1, 2013. CP 23-25.

The trial court imposed a period of six months of supervision and 30 hours of community restitution. CP 6-11. This appeal timely followed. CP 26.

2. SUBSTANTIVE FACTS

On April 25, 2012, appellant Cole Parmenter and his sister, Shandel Parmenter, quarreled over Cole's desire to entertain friends in the Issaquah apartment they shared with their mother, Misie Parmenter.¹ RP 12, 33-34, 37. The brother and sister began arguing in the kitchen while their mother slept in her bedroom. RP 35-36. Shandel left the kitchen and informed her mother of the argument, voicing her concerns about the company Cole wanted to entertain. RP 37. When Shandel returned to the kitchen, Cole accused her of being a "tattletale." RP 37-38, 52. Shandel responded by telling Cole to "suck dick," a phrase she knew aggravated him. RP 54-55. The argument culminated in Cole lowering his shoulder and charging Shandel, striking her in the chest and causing her pain. RP 34, 38-39, 55-56. After this blow, Shandel was "flabbergasted and worried" that Cole would

¹ Since Cole, Shandel, and Misie Parmenter share a last name, they are referred to in this brief by their first names. The State intends no disrespect.

perpetrate further violence. RP 41. Cole had earlier told her that he wanted to "go out and beat somebody into a bloody pulp." Id.

From her bedroom, Misie overheard the commotion and went to the kitchen to see what was going on. RP 18. As she arrived, Shandel picked up the house phone to call 911. RP 18, 40. Before she could complete the call, Cole ripped the cord from the wall, disconnecting the phone. RP 18-20, 26, 34, 40. He then walked down the hallway to his room, donned a tee shirt and shorts, and exited the house. RP 41. Concerned with Cole's behavior, Shandel again decided to call the authorities. RP 41. She took her cell phone from her jacket pocket and walked outside to call 911. RP 40. She observed her brother walking away from the house in the direction of the local elementary school while on the phone with the 911 operator. RP 42. While talking to the operator, Shandel lied and said that Cole had hit her in the face in an effort to alert the operator to the seriousness of the situation. RP 50-51. After the call she waited for authorities to arrive. RP 42.

Officer Joseph Steele of the Issaquah Police Department responded to the scene. RP 64-65. After he arrived, he spent between 20 and 25 minutes talking to Shandel. RP 65. During this time, he took her statement and observed her injuries. RP 65. He

took photos of the scene and of Shandel's chest, documenting the injury she had sustained during Cole's attack. RP 45-48, 67-68.

C. ARGUMENT

1. SUFFICIENT EVIDENCE SUPPORTS THE ASSAULT CONVICTION.

Cole Parmenter's sole claim on appeal is that the State's evidence was insufficient to support a conviction for assault in the fourth degree. Specifically, he claims that the State failed to present any evidence from which a reasonable trier of fact could conclude that the physical contact with his sister was harmful or offensive. This argument should be rejected. The evidence was more than sufficient to support the conviction.

At trial, the State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient if, taken in the light most favorable to the State, 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, 220-22, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). A claim of insufficiency of the evidence

admits the truth of the State's evidence. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." Id. (citation omitted). The appellate court must "defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107 (2000). Furthermore, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. Id. at 718.

To convict Cole Parmenter of assault in the fourth degree, the State had to prove beyond a reasonable doubt that he intentionally assaulted Shandel Parmenter "under circumstances not amounting to assault in the first, second, or third degree, or custodial assault[.]" RCW 9A.36.041(1); CP 1. Assault is defined as "an intentional touching of another person that is harmful or offensive regardless of whether any physical injury is done to the person. A touching is offensive if the touching would offend an ordinary person who is not unduly sensitive." 11 Wash. Prac., Pattern Jury Instr. Crim. WPIC 35.50 (3d Ed). Cole Parmenter

does not dispute that he intentionally touched his sister on April 25, 2012. He only challenges the State's proof with respect to whether the touching was harmful or offensive.

Here, after Shandel complained to her mother about Cole's behavior, the argument between the two continued. RP 37-38. At that point, they were standing approximately two feet apart. RP 40. Cole called Shandel a "tattletale" and Shandel responded by telling Cole to "suck dick." RP 38, 54. In anger, Cole suddenly ran at Shandel and struck her in the chest with his shoulder. RP 40.

While not present during the assault, Misie Parmenter overheard Cole tell Shandel, "I did not hit you, I pushed you." RP 14-18. Misie testified that after the assault Shandel appeared "stressed" and "scared," and had an injury to her chest. RP 28-29.

Officer Steele arrived 10 to 15 minutes after Shandel called 911. RP 42. Officer Steele testified that when he contacted Shandel, she appeared upset about the incident. RP 64. Shandel showed Officer Steele her injuries; he noticed redness on Shandel's chest in the area in which Cole had struck her. RP 68.

Cole Parmenter nevertheless states that his conviction should be reversed because he claims a reasonable person would not have been offended by Cole's physical attack. Brief of

Appellant at 6. This claim should be rejected. Shandel testified that the blow was "painful," that "it kind of hurt," and that it startled her. RP 40. After the assault, Shandel was "stressed," "upset," and "scared." RP 28, 64. Over 15 minutes later, when talking to Officer Steele, Shandel still had a red mark on her chest from Cole's attack. RP 68.

The above evidence, viewed in the light most favorable to the State, including the testimony regarding the assault and subsequent injury to Shandel, is sufficient to find that Cole's physical touching was harmful or offensive. His conviction for assault in the fourth degree should be affirmed.

D. CONCLUSION

For all of the foregoing reasons, this Court should affirm Cole Parmenter's conviction for assault in the fourth degree.

DATED this 25 day of September, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
WESLEY C. BRENNER, WSBA #41343
Deputy Prosecuting Attorney

Attorneys for Respondent
Office WSBA #91002

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 David B. Koch, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. COLE W. PARMENTER, Cause No. 70014-6-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.

Mary Heinzen
Mary Heinzen
Done in Kent, Washington

9/25/13
Date