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71332-9

No. 71332-9-I

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

STATE OF WASHINGTON,

Respondent,

v.

STEVEN WILLIAM STINE,

Appellant.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR 1

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR..... 1

C. STATEMENT OF THE CASE 1

D. ARGUMENT..... 5

THE STATE DID NOT PROVE BEYOND A REASONABLE
DOUBT THAT MR. STINE INTENTIONALLY STRUCK
OFFICER BLAKELY 5

E. CONCLUSION 8

TABLE OF AUTHORITIES

Constitutional Provisions

| | |
|------------------------------|---|
| Const. art. I, § 3 | 5 |
| U.S. Const. amend. XIV | 5 |

Cases

| | |
|--|------|
| <u>Apprendi v. New Jersey</u> , 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)..... | 5 |
| <u>In re Winship</u> , 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) | 5 |
| <u>Jackson v. Virginia</u> , 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed.2d 560 (1979)..... | 5, 6 |
| <u>State v. Colquitt</u> , 133 Wn. App. 789, 137 P.3d 892 (2006) | 6 |
| <u>State v. Copeland</u> , 130 Wn.2d 244, 922 P.2d 1304 (1996) | 5 |
| <u>State v. Green</u> , 94 Wn.2d 216, 616 P.2d 628 (1980)..... | 6 |

Statutes

| | |
|--------------------------|---|
| RCW 9A.36.031(1)(g)..... | 6 |
|--------------------------|---|

A. ASSIGNMENT OF ERROR

The State did not prove the elements of third degree assault beyond a reasonable doubt.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

To prove the crime of third degree assault as charged, the State was required to prove beyond a reasonable doubt that Mr. Stine intentionally struck Officer Blakely as the officer tried to arrest him. Did the State fail to prove the elements of the crime where the evidence shows that Officer Blakely was struck unintentionally as Mr. Stine struggled to get away from him?

C. STATEMENT OF THE CASE

On the evening of October 3, 2013, at around 7:30 p.m., Lynnwood Police Officer Donald Blakely was driving through an area of Lynnwood looking for a bicycle that was reported stolen. 12/10/13RP 99. About two blocks from where the officer took the initial report, he saw Steven Stine walking a bicycle along the sidewalk. 12/10/13RP 99-101. The officer pulled his patrol car up to Mr. Stine and turned his spotlight on him. 12/10/13RP 100. Officer Blakely

thought the bicycle Mr. Stine was pushing appeared to match the description of the bike that was stolen.¹ 12/10/13RP 102.

Officer Blakely got out of his car and told Mr. Stine to stop walking and place the bicycle on the ground. 12/10/13RP 101. Mr. Stine stopped as requested and leaned the bike against a nearby fence. 12/10/13RP 101. He then placed his hand in his pocket, which caused the officer to fear for his safety. 12/10/13RP 101. The officer drew his firearm, pointing it at the ground, and told Mr. Stine to show him his hands. 12/10/13RP 101-03. Mr. Stine complied and Officer Blakely could see that in fact he did not have a weapon. 12/10/13RP 101.

Officer Blakely told Mr. Stine to lie on the ground but did not explain why. 12/10/13RP 104, 121, 131. Mr. Stine remained standing and said, "go ahead and shoot me, man." 12/10/13RP 104. After telling Mr. Stine several times to lie on the ground without success, Officer Blakely re-holstered his firearm, approached Mr. Stine, and grabbed his hand. 12/10/13RP 105. He told him he was under arrest but did not say what for. 12/10/13RP 105, 121.

When Officer Blakely grabbed Mr. Stine's hand, Mr. Stine pulled away. 12/10/13RP 105. The officer grabbed his other arm and

¹ The State never charged Mr. Stine with possession of stolen property, however. 12/10/13RP 76.

tried to spin him around so that he could place both of his hands in handcuffs behind his back. 12/10/13RP 105. Officer Blakely was unable to handcuff Mr. Stine because he kept pulling away.

12/10/13RP 105. The officer then stepped in front of Mr. Stine and swept his leg around Mr. Stine's legs. 12/10/13RP 105. Both men fell to the ground, with Mr. Stine lying face-forward and Officer Blakely on top of him. 12/10/13RP 105.

Mr. Stine continued to struggle and his arms flailed about, preventing the officer from taking hold of both of his arms.

12/10/13RP 106. Mr. Stine quickly spun around and onto his back, striking the officer in the face with either his elbow or his fist as he spun toward him. 12/10/13RP 106-07. Officer Blakely struck Mr. Stine in the face and head repeatedly with his fist. 12/10/13RP 107, 125. He thought Mr. Stine was trying to strike him with his own fists. 12/10/13RP 107, 128, 132-33.

While Mr. Stine and Officer Blakely struggled on the ground, a civilian arrived in a truck and offered to help. 12/10/13RP 108. The civilian sat on Mr. Stine's legs and held them while Officer Blakely radioed for help. 12/10/13RP 108. Soon, Police Officer William Koonce arrived and took the place of the civilian. 12/10/13RP 109.

Officer Koonce noted that Mr. Stine was struggling and flailing around, trying to break free. 12/10/13RP 140-41. But he could not say that Mr. Stine was intentionally trying to strike the officers. 12/10/13RP 140-41.

Officer Koonce grabbed Mr. Stine by the neck while Officer Blakely kned him several times in the ribs. 12/10/13RP 111, 125, 141. Officer Koonce then punched Mr. Stine several times in the head. 12/10/13RP 144. Mr. Stine grabbed at his hand, trying to defend himself from the punches. 12/10/13RP 144. Finally, the officers managed to handcuff Mr. Stine with his hands behind his back. 12/10/13RP 112. The entire incident happened quickly and was difficult for Officer Blakely to remember and explain. 12/10/13RP 123-24.

As a result of the struggle, Mr. Stine received a scrape on the side of his head and his head was noticeably bleeding. 12/10/13RP 114. Officer Blakely received a scrape on his lower lip and on three of his fingers. 12/10/13RP 114-15. He did not know how he received the scrape on his lip. 12/10/13RP 115.

An aid car arrived and medics evaluated Mr. Stine. 12/10/13RP 147. They recommended he be taken to a hospital for treatment of his

injuries. 12/10/13RP 147. After receiving treatment at the hospital, Mr. Stine was taken to jail. 12/10/13RP 147.

Mr. Stine was charged with one count of third degree assault of Officer Blakely, RCW 9A.36.031(1)(g). CP 124. After a jury trial, he was convicted as charged. CP 14, 102.

E. ARGUMENT

THE STATE DID NOT PROVE BEYOND A
REASONABLE DOUBT THAT MR. STINE
INTENTIONALLY STRUCK OFFICER BLAKELY

It is a fundamental principle of criminal procedure that an accused is presumed innocent of a criminal charge and the State has the burden of proving guilt beyond a reasonable doubt. State v. Copeland, 130 Wn.2d 244, 294, 922 P.2d 1304 (1996). Constitutional due process requires the State to prove every element of the charged offense beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466, 477, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); U.S. Const. amend. XIV; Const. art. I, § 3.

In reviewing the sufficiency of the evidence to uphold a criminal conviction, the question is whether, after viewing the evidence 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. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The reviewing court presumes the truth of the State's evidence and all reasonable inferences that can be drawn from that evidence. State v. Colquitt, 133 Wn. App. 789, 796, 137 P.3d 892 (2006). But the existence of a fact cannot rest upon guess, speculation, or conjecture. Id.

To prove the crime of third degree assault, the State was required to prove beyond a reasonable doubt that Mr. Stine “intentionally assaulted Donald Blakely” and “[t]hat at the time of the assault, Donald Blakely was a law enforcement officer who was performing his official duties.” CP 96; RCW 9A.36.031(1)(g). “Assault” was defined for the jury as

an intentional touching or striking of another person, that is harmful or offensive, regardless of whether any physical injury is done to the person. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

CP 98.

Thus, to prove the crime as charged, the State was required to prove that Mr. Stine intentionally struck Officer Blakely. The State did

not meet its burden because the evidence shows only that Officer Blakely was struck unintentionally as Mr. Stine struggled to get away.

Officer Blakely stopped Mr. Stine and ordered him to the ground while displaying his firearm but he did not explain why.

12/10/13RP 104, 121, 131. Although the officer thought the bicycle Mr. Stine was pushing matched the description of the bicycle that was stolen, the State never charged Mr. Stine with theft or possession of stolen property. 12/10/13RP 76, 102. In addition, Mr. Stine was not armed and did not present any apparent danger to the officer.

12/10/13RP 101-03. Mr. Stine was understandably reluctant to comply with the officer's excessive show of force and unreasonable demands.

After Officer Blakely knocked Mr. Stine to the ground and grabbed at his arms, Mr. Stine struggled to break free. 12/10/13RP 105-07. Mr. Stine flailed about, unintentionally striking the officer in the face with his elbow or fist. 12/10/13RP 106-07. Officer Blakely repeatedly punched Mr. Stine in the face and head. 12/10/13RP 107, 125. Although he said he thought Mr. Stine was trying to strike him with his own fists, it is likely Mr. Stine was merely trying to defend himself from the officer's blows and free himself from the officer's hold. 12/10/13RP 107, 128, 132-33. Consistent with this explanation,

when Officer Koonce arrived, he noted that Mr. Stine was struggling and flailing about, trying to break free. 12/10/13RP 140-41. Officer Koonce could not say that Mr. Stine was intentionally trying to strike the officers. 12/10/13RP 140-41.

In sum, the evidence shows that Officer Blakely was struck unintentionally as Mr. Stine struggled to free himself from the officer's excessive show of force. Thus, the State did not prove beyond a reasonable doubt that Mr. Stine intentionally struck Officer Blakely and the conviction for third degree assault must be reversed.

F. CONCLUSION

Because the State did not prove the elements of the crime beyond a reasonable doubt, the conviction must be reversed and the charge dismissed.

Respectfully submitted this 27th day of May, 2014.


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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

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|----------------------|---|---------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| Respondent, |) | |
| |) | NO. 71332-9-I |
| |) | |
| STEVEN STINE, |) | |
| |) | |
| Appellant. |) | |

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 27TH DAY OF MAY, 2014, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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| [X] | SETH FINE, DPA SNOHOMISH COUNTY PROSECUTOR'S OFFICE 3000 ROCKEFELLER EVERETT, WA 98201 | (X) () () | U.S. MAIL HAND DELIVERY _____ |
| [X] | STEVEN STINE 21414 CYPRESS WAY BRIER, WA 98036-7938 | (X) () () | U.S. MAIL HAND DELIVERY _____ |

SIGNED IN SEATTLE, WASHINGTON, THIS 27TH DAY OF MAY, 2014.

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