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SUPREME COURT
STATE OF WASHINGTON als
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NO. _____

Case #: 1037317

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RUDOLPH FINNE

Petitioner

PETITION FOR REVIEW

Court of Appeals No. 858394-I
Appeal from the Superior Court of King County
Cause No. 22-1-04858-8KNT
The Honorable Elizabeth Berns

DANA RYAN
Attorney for Petitioner
WSBA#17418

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I. IDENTITY OF PETITIONER

The Petitioner is Rudolph Finne, Defendant and Appellant in the case below.

II. COURT OF APPEALS DECISION

Petitioner seeks review of the Court of Appeals Decision in Division 1, dated 11/25/24 , in case No. 85839-4-I. That court affirmed the conviction of the King County Superior Court.

III. ISSUE FOR REVIEW

Did Rudolph Finne intentionally assault Candace Martin and inflict great bodily harm?

IV. STATEMENT OF THE CASE

Defendant Rudolph Finne and Rebekah Murray were in a dating relationship, and on the evening of July 22, 2022, were at the Pho Liu Restaurant located at 15220 Ambaum Way in Burien , Washington. (RP254) They were seated at a table when a person unknown to either , and later identified as Candace Nessmith , objected to the tone of the conversations. She approached the defendant and stated that he should not speak that way to a woman, meaning Rebekah Murray. (RP 366). The statements were repeated by Candace Smith to the Defendant Finne over and over. (RP 368). The Defendant, Mr. Finne then left the restaurant in an effort to diffuse the situation. The Defendant told the bartender that he was leaving and would be outside in the parking lot by the car. (RP 368).

When Rebekah Murray came outside to the vehicle, the Defendant, Mr. Finne, had concerns about her sobriety and stated :I don't want you to drive because you could kill us. (RP 371) . Candace Nessmith the appeared and approached the Defendant . Tthe Defendant then put his his hand up and stated "stop".and held his arm out. (RP 306).

The defendant Finne did not threaten Candace Nessmith. (RP 259) . Candace Nessmith fell backward over a curb in the parking lot and onto the ground. The Defendant , Finne, was standing over her and said " I wish you would have just left us alone"(RP 372). Mr. Finne left the scene walking. A passerby called 911. Candace Nessmith and Rebekah Murray walked back to the bar. (RP 278). Police arrived conducted an investigation. Later that night, Candace Smith went to

Highline Hospital where she was diagnosed with a broken leg.
(RP 315). The Defendant Finne was arrested at the scene.

The Defendant was charged with Assault 2 regarding the injury to Candace Nessmith, and Assault 4 as to Rebekah Murray.

After a trial, the jury court found Mr. Finne Guilty of Assault 2 as to Candice Nessmith, and Not Guilty of Assault 4 DV involving Rebekah Murray. The court imposed a standard range sentence. Finne Petitions for Review.

ARGUMENT

The Defendant , Rudolph Finne, claims that sufficient evidence does not support the jury finding that he committed assault in the second degree. RCW 9A.36.021(1)(a).

The State has the burden to prove every element of the crime charged beyond a reasonable doubt. U.S Const. amend. XIV.

Wash. Const. art. I, sec. 3; In re Winship 397 U. S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). “[T]he Due process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charges.” Winship 397 U.S. at 364; State v. Rich, 184 Wn. 2d 897, 903, 365 P. 3d 746 (2016).

Sufficiency of the evidence is a question of constitutional law that is reviewed de novo. Rich 184 Wn. 2d at 903.

Evidence is sufficient to support a conviction if any rational trier or fact could have found the essential elements of the crime charged beyond a reasonable doubt. State v. Johnson, 188 Wn. 2d 742, 399 P. 3d 507 (2017). A challenge to the sufficiency of the evidence admits the truth of the state's evidence. State v. Witherspoon, 180 Wn. 2d 875, 329 P. 3d 888 (2014).

(2014). “[A]ll reasonable inferences from the evidence must be drawn in favor of the state and interpreted most strongly against the defendant. State v. Salinas , 119 Wn. 2d 192, 829 P. 2d 1068 (1968). In determining sufficiency, circumstantial evidence is no less reliable than direct evidence. State v. Delmarter, 94 Wn. 2d 634, 618 P. 2d 99 (1980).

A person is guilty of assault in the second degree if he [i]ntentionally assaults another and thereby recklessly inflicts substantial bodily harm. RCW 9A.36.021(1)(a). The State has the burden of proving that the Defendant , Mr. Finne, “recklessly” inflicted bodily harm on Candice Nessmith. The State must prove an “intentional assault” which thereby inflicts substantial bodily harm. State v. R.H.S, 94 Wn. App

844, 974 P. 2d 1253 (citing 9A.36.021(1)(a)).

RCW 9A.08.010(1) defines “recklessness”, and this was the Instruction 10 used in this case and submitted by the State.

CP 36. Whether sufficient evidence supports a finding that Defendant Finne acted recklessly “depends on both what the defendant knew and how a reasonable person would have acted knowing these facts. State v. Graham, 153 Wn. 2d 400, 103 P. 2d 1238 (2005) (quoting RHS, 94 Wn. App. At 847).

Viewing the evidence and all reasonable inferences in the light most favorable to the evidence to the State, the evidence showed Defendant Finne caused a injured leg. Nothing in the record shows what Finne knew of or that he disregarded a substantial risk that a wrongful act may occur. Dr. Otlans in his testimony indicated that at the time of the exam, Candace

Nessmith indicated only that the Defendant pushed her twice, and that on the second push she injured her knee. (CP 295).

The evidence does not support the finding that Defendant Finne knew of and disregarded a substantial risk that he would cause an injury to the leg of Candace Nessmith when he pushed her back as she approached him in the parking lot of the Phio Liu.

CONCLUSION

This Court should accept review, and reverse and dismiss the conviction for Assault 2.

Respectfully submitted this 23rd day of Dec. 2024



Dana Ryan (WSBA 17418)
Attorney for Petitioner

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the Laws of the State of Washington that on the below date, the original of the document to which this declaration is attached, was filed in the **Supreme Court** and a true and correct copy was mailed with first class postage prepaid to the following attorney of record at their regular office or residence address listed on ACORDS;

(X) King County Prosecuting Attorney-Appellate Unit
[PAOAppellatenitMail@kingcounty.gov]

Dana Ryan, Attorney

Date: 12/23/ 2024

APPENDIX A

Court of Appeals Decision Dated 11/25/2024 , Division 1.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RUDOLPH ERIC FINNE,

Appellant.

No. 85839-4-I

DIVISION ONE

UNPUBLISHED OPINION

CHUNG, J. — Rudolph Finne challenges his conviction for assault in the second degree, asserting there was insufficient evidence to support the mens rea prerequisite of the crime. We disagree and affirm.

FACTS

Rudolph Finne and Rebekah Murray were intermittent romantic partners. On July 10, 2022, Finne and Murray went to a restaurant and bar in Burien. Although the beginning of the evening seemed enjoyable, Finne’s mood steadily became more hostile toward Murray.

Meanwhile, Candice Nessmith, a woman unknown to either Finne or Murray before the incident, went to the same restaurant after she got off work, around 12:45 or 1 a.m. on July 11, 2022. When she was ordering a drink at the bar, Nessmith noticed a couple she did not recognize, later identified as Finne and Murray, in a “one-sided argument,” with Finne berating Murray. Later, when she saw them again on the back patio, Nessmith intervened and told Finne to calm down and that the way he was talking to Murray “wasn’t very appropriate.”

In response, Finne got “into [Nessmith’s] face” and told her to mind her own business. Thereafter, Nessmith went to the other side of the patio and eventually went back in to the bar, finished her drink, talked with some people she knew, and left around 1:15 a.m.

As she exited the restaurant, she saw Finne and Murray once more, standing near a car with the driver’s side door open. Murray had her back to the open driver’s side door and Finne was facing her and was “right up in [Murray’s] face.” While watching them, Nessmith overheard Finne say to Murray, “[I]f you don’t take me back to the house, I’m going to fucking kill you.”

Nessmith walked closer to the couple, asked Murray if she was okay, and told Finne the way he spoke to Murray was inappropriate and unnecessary. Nessmith testified that Finne then turned around, put his hand to Nessmith’s throat, and pushed her to the ground. Nessmith realized the situation was more dangerous than she previously thought. She rose to her feet and attempted to approach Murray again to get them both inside the restaurant. During this second approach, Finne turned toward Nessmith and threw her to the ground, saying, “[Y]ou don’t know who the fuck I am.” Nessmith testified that after this second fall, she felt pain in her knee and was unable to stand back up. While Nessmith was on the ground, she stated she received further blows to her left thigh, but she could not determine whether it was punches or kicks.

Murray attempted to restrain Finne as he hit Nessmith, but was unsuccessful. After about ten minutes, Nessmith and Murray were able to reenter the restaurant after a passerby distracted Finne. Shortly after Murray and

Nessmith entered the restaurant, King County Sheriff's deputies arrived, a bystander pointed out Finne, and Finne was arrested.

Nessmith was treated by medics at the scene, and the paramedics recommended she go to a hospital. Medical imaging showed that she had a fractured tibia, requiring surgery.

Finne was charged with assault in the second degree of Nessmith and assault in the fourth degree of Murray. A jury convicted Finne of assault in the second degree of Nessmith and found him not guilty of assault in the fourth degree of Murray. Finne filed a timely appeal.

DISCUSSION

Finne asserts there was insufficient evidence to support the jury verdict. Specifically, Finne argues the State failed to prove mens rea, i.e., that Finne had a state of mind that showed recklessness or intent to inflict injury. We disagree.

Due process requires that the State prove every element of a crime beyond a reasonable doubt. State v. Johnson, 188 Wn.2d 742, 750, 399 P.3d 507 (2017). The sufficiency of the evidence is a question of constitutional law that we review de novo. State v. Rich, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). To determine whether sufficient evidence supports a conviction, an appellate court must "view the evidence in the light most favorable to the prosecution and determine whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt." State v. Homan, 181 Wn.2d 102, 105, 330 P.3d 182 (2014). A claim of insufficient evidence admits the truth of the State's evidence and all reasonable inferences from that evidence. State v. Salinas, 119

Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences must be interpreted in favor of the State and most strongly against the defendant. Id. We defer to the trier of fact on “issues of witness credibility.” State v. Witherspoon, 180 Wn.2d 875, 883, 329 P.3d 888 (2014).

For the State to convict Finne of assault in the second degree, it needed to prove that Finne (1) intentionally assaulted Nessmith and (2) thereby recklessly inflicted substantial bodily harm. RCW 9A.36.021(1)(a). Assault is “an intentional touching or striking of another person that is harmful or offensive regardless of whether any physical injury is done to the person.”¹ A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime. RCW 9A.08.010(1)(a). “Criminal intent may be inferred from all the facts and circumstances surrounding the commission of an act.” State v. Brooks, 107 Wn. App. 925, 929, 29 P.3d 45 (2001) (citing State v. Lewis, 69 Wn.2d 120, 123, 417 P.2d 618 (1966)). Additionally, intent may be inferred from circumstantial evidence, and a jury may infer or permissively presume a defendant intends “the natural and probable consequences of his or her acts.” State v. Bea, 162 Wn. App. 570, 579, 254 P.3d 948 (2011) (citing State v. Caliguri, 99 Wn.2d 501, 506, 664 P.2d 466 (1983)).

¹ State v. Villanueva-Gonzalez, 180 Wn.2d 975, 982, 329 P.3d 78 (2014) (citing 11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY INSTRUCTIONS: CRIMINAL 35.50, at 547 (5th ed. 2021)). As the term “assault” is not defined in the criminal code, courts use common law to define the term. State v. Krup, 36 Wn. App. 454, 457, 676 P.2d 507 (1984). Washington courts recognize three common law definitions of “assault.” State v. Smith, 159 Wn.2d 778, 781-82, 154 P.3d 873 (2007). The jury instruction in Finne's trial reflects the definition stated in Villanueva-Gonzalez. See Clerk's Papers at 16 (jury instruction no.7) (“An assault is 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.”).

“A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.” RCW 9A.08.010(1)(c). “There is both a subjective and an objective component to the mens rea of ‘recklessness.’ ” State v. Melland, 9 Wn. App. 2d 786, 804, 452 P.3d 562 (2019) (quoting Rich, 184 Wn.2d at 904). Sufficiency of the evidence of recklessness “ ‘depends on both what the defendant knew and how a reasonable person would have acted knowing these facts.’ ” Melland, 9 Wn. App. 2d at 804 (internal quotation marks omitted) (quoting State v. Graham, 153 Wn.2d 400, 408, 103 P.3d 1238 (2005)).

Here, when viewed in a light most favorable to the State and assumed true, the evidence was sufficient to establish that Finne intentionally assaulted Nessmith. The jury heard testimony from Murray that Finne grew increasingly agitated throughout the night that the assault happened. The jury also heard from both Nessmith and Murray that each time Nessmith attempted to intervene on Murray’s behalf, Finne redirected his anger toward Nessmith. Nessmith and Murray both testified that when Nessmith intervened in the parking lot, Finne threw her to the ground. Nessmith further recounted that after she got up and attempted to approach Murray and get them both into the restaurant, Finne shoved her to the ground a second time and continued to punch or kick her until a bystander lured Finne away. Any rational jury could conclude beyond a reasonable doubt that in light of Finne’s growing anger with Nessmith over the

evening, by grabbing, shoving, and hitting Nessmith, he intended the natural and probable consequence of his acts, i.e., a harmful or offensive touching, as required to prove the first element of intentional assault.

Furthermore, the State provided sufficient evidence that Finne recklessly caused Nessmith substantial bodily harm. Finne claims that “[n]othing in the record shows what Finne knew of or that he disregarded a substantial risk that a wrongful act may occur,” and that Nessmith told her orthopedic surgeon, Dr. Peters Otlans, during a medical exam that Finne pushed her twice, and the second push injured her knee. Finne asserts the evidence does not show recklessness but instead merely “showed Defendant Finne caused a[n] injured leg.” However, Finne ignores the standard for a sufficiency claim, which requires that a reviewing court “view the evidence in the light most favorable to the prosecution,” Homan, 181 Wn.2d at 105, and “admit[] the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” Salinas, 119 Wn.2d at 201.

This case is unlike Melland, in which the court concluded that if the only evidence was that the defendant caused the injury, this was insufficient to prove that the defendant “knew of and disregarded a substantial risk that he would fracture [the victim’s] finger when he grabbed the phone from her hand.” 9 Wn. App. 2d at 805. Here, by contrast, there is ample evidence beyond merely the fact of Nessmith’s injuries that Finne chooses to ignore in his briefing. Murray and Nessmith testified that Finne threw Nessmith down onto a concrete parking lot and then shoved her a second time. Nessmith testified more specifically that

Finne grabbed her by her neck and threw her to the ground and that he also hit or kicked her while she was on the ground. A reasonable person would know that grabbing a person and throwing or shoving them onto concrete presents a substantial risk that substantial bodily harm will result. Moreover, a reasonable person would not disregard this substantial risk by repeating the action or kicking or punching the person when they are on the ground. Finne's acts show a gross deviation from conduct a reasonable person would exercise in the same situation. Thus, viewing the evidence in the light most favorable to the State and assuming it to be true, any rational jury could find beyond a reasonable doubt that Finne acted recklessly to cause Nessmith substantial bodily harm.

CONCLUSION

We conclude a reasonable trier of fact could find beyond a reasonable doubt that Finne intentionally assaulted Nessmith and recklessly inflicted substantial bodily harm. We affirm the conviction of assault in the second degree.

Chung, J.

WE CONCUR:

Seldman, J.

Smith, C.G.

DANA RYAN

December 24, 2024 - 1:22 PM

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