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Division Two

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JASON ROBERT STOMPS, Appellant.	No. 47546-4-II UNPUBLISHED OPINION

LEE, J. — Jason Robert Stomps appeals his first degree burglary, three counts of second degree kidnapping, and three counts of second degree assault convictions. He argues sufficient evidence does not exist to support his convictions. We disagree and affirm.

FACTS

Stomps worked as a bail bond recovery agent. One evening, Stomps went to the home of Annette and Bill Waleske looking for Courtney Barnes. Barnes was free on bail, and his girlfriend, Sinan Hang, guaranteed the bail bond. Hang listed the Waleskes' address as her address. Hang was friends with Annette[1] and had used the Waleskes' address in the past, but she did not have permission to use it on the bail bond application. Barnes listed a separate address. When Barnes failed to appear for a court hearing, the bail bond company contracted with Stomps to locate him.

When Stomps arrived at the Waleskes' residence, Annette and Bill were out, but their daughter, Tayler Waleske; son, Quincey Waleske; and daughter's boyfriend, Nathan Panosh, were at the home. Tayler and Nathan were watching a movie when they heard pounding on the door.

[1] Since several of the individuals have the same last name, we respectfully use first names for clarity.

They walked towards the door and heard Stomps yell, "I'm looking for Courtney Barnes. Open up your door, or I'll kick your fucking door down." Report of Proceedings (RP) at 114. Tayler did not know anyone by the name of Courtney Barnes. Tayler was frightened by Stomps, and yelled out, "We don't know Courtney. You need to leave." RP at 115. The pounding and yelling continued. Tayler and Nathan went upstairs to get Quincey. Tayler then called 911.

While Tayler was on the phone with the 911 operator, Stomps broke down the front door with a railroad tie driver, which is similar to a sledgehammer. Once inside, he ordered everyone downstairs. Even though he recognized that the three individuals were not the fugitive he was looking for and that Barnes was not in the house, Stomps pointed his gun at them and ordered Quincey, who had just gotten out of the shower and had only a towel wrapped around him, to handcuff himself to Nathan and then ordered all three to get on the floor. Stomps then identified himself as a bail bond recovery agent. The parties dispute whether this was the first time Stomp identified himself. Nathan then repeatedly asked for the key to unlock the handcuffs, but Stomps refused.

Police arrived at the residence and detained Stomps. The State ultimately charged Stomps with first degree burglary, three counts of first degree kidnapping, and three counts of second degree assault; each charge included a special allegation that he was armed with a firearm.

During trial, Stomps admitted he did not first check the address listed for Barnes before going to the address listed for Barnes' girlfriend. Also during trial, Nathan testified that he did not feel free to leave when Stomps handcuffed him and pointed a gun at him. Quincey testified, "I was intimidated. I didn't want—I felt like my life was in danger." RP at 91. He further testified he did not feel free to leave because he was wrapped in a towel and being held at gunpoint. Tayler

also testified that she did not feel free to leave because she "had a gun pointed at [her]" and was afraid she "was going to get shot." RP at 128-29. The 911 recording was also admitted where Tayler tells the operator they were scared.

A jury found Stomps guilty as charged. Stomps appeals.

ANALYSIS

Stomps contends he was denied due process because sufficient evidence does not exist to support his convictions. We disagree.

A. LEGAL PRINCIPLES

Evidence is sufficient if, when viewed in the light most favorable to the State, it permits a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Tilton*, 149 Wn.2d 775, 786, 72 P.3d 735 (2003). Courts must draw all reasonable inferences from the evidence in favor of the State and interpret the evidence most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence receives the same weight as direct evidence. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). Appellate courts defer to the fact finder on the resolution of conflicting testimony, credibility determinations, and the persuasiveness of the evidence. *Id.* at 874-75.

The purpose of the sufficiency inquiry is to "'ensure that the trial court fact finder 'rationally appl[ied]' the constitutional standard required by the due process clause of the Fourteenth Amendment, which allows for conviction of a criminal offense only upon proof beyond a reasonable doubt.'" *State v. Berg*, 181 Wn.2d 857, 867, 337 P.3d 310 (2014) (alteration in original) (quoting *State v. Rattana Keo Phuong*, 174 Wn. App. 494, 502, 299 P.3d 37 (2013), *review denied*, 182 Wn.2d 1022 (2015)). Our review is de novo. *Berg*, 181 Wn.2d at 867.

B. FIRST DEGREE BURGLARY

For the first degree burglary charge, the State had to prove beyond a reasonable doubt that Stomps entered or remained unlawfully in the Waleskes' home with the intent to commit a crime against a person or property therein, while armed with a deadly weapon. RCW 9A.52.020(1)(a). Stomps contends the State failed to prove he intended to commit a crime when he entered the home since he was acting in his capacity as a bail bond recovery agent.

Viewing the facts in the light most favorable to the State, Stomps broke down the Waleskes' front door with a railroad tie driver at an address given for the bond co-signor, not Barnes. And he broke down the door even after being told Barnes was not in the home and that he needed to leave. While pointing a gun at the three individuals he knew were not Barnes, Stomps handcuffed two of the teenagers and forced all three to stay downstairs. Stomps did this even after he had been told that Barnes was not in the house.[2]

"In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to

[2] Under the "Rule of Taylor," a bail bond recovery agent may pursue a fugitive "'into another State; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose. The seizure is . . . likened to the re-arrest by the sheriff of an escaping prisoner.'" *Johnson v. County of Kittitas*, 103 Wn. App. 212, 217-18, 11 P.3d 862 (2000) (quoting *Taylor v. Taintor*, 83 U.S. 366, 371, 21 L. Ed. 287, 16 Wall. 366 (1872)). However, a recovery agent may not "sweep from his path all third parties who he thinks are blocking his search for his client, without liability to the criminal law." *State v. Portnoy*, 43 Wn. App. 455, 466, 718 P.2d 805 (1986). Since Stomps entered the home of an address given by the bond's co-signer and not the address of the fugitive, since he was told by the individuals inside the home that they did not know the individual he was looking for, and since he still proceeded to forcefully enter the home without permission, Stomps does not have immunity from Washington criminal laws under *Portnoy*.

have been made without such criminal intent." RCW 9A.52.040. In this case, a rational trier of fact could find that Stomps unlawfully entered the Waleskes' home. Given the circumstances of the break in and the actions that transpired thereafter, a rational trier of fact can infer he intended to commit a crime. We defer to the trier of fact on any conflicting testimony as to Stomps' intent. *Thomas*, 150 Wn.2d at 874.

Given the evidence, a rational trier of fact could find the essential elements of first degree burglary beyond a reasonable doubt. Thus, sufficient evidence exits to support Stomps' first degree burglary conviction.

C. SECOND DEGREE KIDNAPPING

Stomps next contends sufficient evidence does not support his three second degree kidnapping convictions. Specifically, Stomps argues that there was insufficient evidence to show Stomps intentionally abducted the three individuals. We disagree.

"A person is guilty of kidnapping in the second degree if he or she intentionally abducts another person under circumstances not amounting to kidnapping in the first degree." RCW 9A.40.030(1). "'Abduct' means to restrain a person by either (a) secreting or holding him or her in a place where he or she is not likely to be found, or (b) using or threatening to use deadly force." Former RCW 9A.40.010(1) (2011).[3]

Here, Stomps ordered everyone downstairs after he broke the door down and entered the home. Even though he recognized that none of the three teenagers were Barnes, Stomps pointed his gun at them and ordered Quincey, who had just gotten out of the shower and had only a towel

[3] Our legislature amended an unrelated subsection of RCW 9A.40.010 in 2014 that does not apply to this appeal.

wrapped around him, to handcuff himself to Nathan and then ordered both men and Tayler to get on the floor. Nathan repeatedly asked for the key to unlock the handcuffs, but Stomps refused. Nathan testified that he did not feel free to leave when Stomps handcuffed him and pointed a gun at him. Quincey testified, "I was intimidated. I didn't want - - I felt like my life was in danger." RP at 91. He further testified he did not feel free to leave because he was wrapped in a towel and being held at gunpoint. Tayler also testified that she did not feel free to leave because she "had a gun pointed at [her]" and was afraid she "was going to get shot." RP at 128-29. The 911 recording was also admitted where Tayler tells the operator they were scared.

Viewing these facts in the light most favorable to the State and deferring to the trier of fact on any conflicting testimony as to Stomps' intent, we hold a rational trier of fact could find the essential elements of second degree kidnapping beyond a reasonable doubt for each of the three victims. Thus, sufficient evidence exists to support Stomps' three second degree kidnapping convictions.

D. SECOND DEGREE ASSAULT

Lastly, Stomps contends sufficient evidence does not support his three second degree assault convictions. Specifically, Stomps argues that there is insufficient evidence to support his intent to create apprehension and fear of bodily injury. Again, we disagree.

"A person is guilty of second degree assault if he or she, under circumstances not amounting to assault in the first degree, . . . [a]ssaults another with a deadly weapon." RCW 9A.36.021(1)(c). Assault includes "putting another in apprehension of harm." *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009).

Here, Stomps broke down the front door after yelling and pounding on the door, telling the occupants to "[o]pen up your door, or I'll kick your fucking door down." RP at 114. Stomps then ordered Tayler, Quincey, and Nathan downstairs. Even though he recognized the three individuals were not Barnes, Stomps pointed his gun at them, ordered Quincey and Nathan to handcuff themselves together, and then ordered all three to get on the floor. During trial, Quincey testified he felt his life was in danger; Tayler testified she felt she was going to die; and on the 911 tape, Tayler reported to the 911 operator that they were all scared.

Viewing the evidence in the light most favorable to the State, we hold a rational trier of fact could find the essential elements of second degree assault beyond a reasonable doubt. Thus, sufficient evidence exits to support Stomps' three second degree assault convictions.

Sufficient evidence exists to support all of Stomps' convictions. Therefore, we affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Lee, P.J.

We concur:

Melnick, J.

Sutton, J.