

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

IRA TRENTON BODEKER,

Appellant.

No. 39537-1-II

UNPUBLISHED OPINION

Worswick, A.C.J. — Ira Bodeker appeals his Mason County convictions of felony violation of a court order—domestic violence and third degree assault—domestic violence. He contends that the assault conviction violated constitutional double jeopardy guarantees¹ because the assault was used to raise the protection order violation to a felony. We affirm.

FACTS

The charges arose from Bodeker’s continued contact with his estranged wife, Rhonda Bodeker.² Despite the no contact order, he moved back into her residence. Rhonda testified that they were drinking together on Christmas Eve 2008. Bodeker began some verbal harassment, and she went to another room to get away from him. He followed her from room to room, “smack[ing]” her and spitting on her. VII Report of Proceedings (RP) at 70. He tore the

¹ See U.S. Const. amend. V and Wash. Const. art. I, § 9.

² We use Rhonda’s first name for clarity, intending no disrespect.

bathroom mirror off the wall, grabbed a book from her hands and ripped it apart, and then threw some weights at the television but missed and made a hole in the wall. She retreated to the couch and he came and stood over her, grabbed her shoulders, and hit her with his head “as hard as he could.” VII RP at 72. He left after that and she called her mother, who called the police. Her injuries included a large bump on her forehead; substantial bruising; and black eyes, both swollen shut. She spent the night in the hospital.

Bodeker asserted that Rhonda had been the aggressor. He said that at one point, she bit him on the chest, and he accidentally hit her with his head when he looked down at the wound. The jury convicted him as charged.

ANALYSIS

The Fifth Amendment does not limit a legislature’s prerogative to define crimes and fix punishments. *Brown v. Ohio*, 432 U.S. 161, 165, 97 S. Ct. 2221, 53 L. Ed. 2d 187 (1977). Thus, we must determine whether in this case, the legislature authorized separate punishments for conduct that violated two statutes. *See State v. Freeman*, 153 Wn.2d 765, 771, 108 P.3d 753 (2005).

Here, the statutes defining the crimes are located in different chapters of the Revised Code of Washington. Assault is codified in Title 9A of the criminal code. RCW 9A.36.031. Felony violation of a court order is not in the criminal code, but rather, is located in Title 26, Domestic Relations. It is codified in chapter 26.50, RCW, the Domestic Violence Protection Act. RCW 26.50.110. RCW 26.50.210 expressly provides that “[a]ny proceeding” under the Act, “is in addition to other civil or criminal remedies.” This is clear evidence that the legislature intended to

No. 39537-1-II

punish the crimes separately. *See State v. Leming*, 133 Wn. App. 875, 886-87 138 P.3d 1095 (2006); *State v. Moreno*, 132 Wn. App. 663, 669-70, 132 P.3d 1137 (2006). There is, accordingly, no double jeopardy violation.

Affirmed.

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 pursuant to RCW 2.06.040, it is so ordered.

Worswick, A.C.J.

We concur:

Armstrong, J.

Van Deren, J.