IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. BOW STAR HALL, Appellant.	No. 39570-3-II UNPUBLISHED OPINION

Hunt, J. — Bow Star Hall appeals his jury trial convictions for custodial assault and resisting arrest. He argues that (1) the evidence was insufficient to support his convictions, and (2) his two convictions constitute double jeopardy.[1] We affirm.

FACTS

I. Assault and Resisting

On April 14, 2009, Community Corrections Officers (CCO) Brett Curtright and Mathew Kelley, Bow Star Hall's supervising CCO, attempted to conduct a "ten-day home contact" with Jeff Nelson, who was supposed to be living in a bus located next to the residence at 102 Hogue Road in Onalaska. Verbatim Report of Proceedings (VRP) (June 4, 2009) at 34. After

[1] U.S. Const. amend. V; Wash. Const. art. I, § 9.

determining that no one was in the bus, the CCOs went to the residence to look for Hall, for whom Kelley had requested an arrest warrant.[2]

Hall's brother answered the door, told Kelley that Hall was inside, and let the CCOs into the residence. The CCOs approached Hall as he lay on the living room couch; Kelley told Hall that there was an arrest warrant for him and that they intended to "take him into custody." VRP (June 4, 2009) at 36. Hall was "verbally resistive," insisting that there was no arrest warrant and that the CCOs were not going to arrest him because they were not "cops." VRP (June 4, 2009) at 36-37.

When the CCO's explained that they could arrest him without a warrant, Hall threatened to "smash [their] f[**]king faces in" if they "laid a finger on him." VRP (June 4, 2009) at 38. Although he would neither cooperate nor follow instructions, for the first ten to fifteen minutes, Hall was not "shouting out or anything." VRP (June 4, 2009) at 40. He got up from the couch, walked to the kitchen, lit a cigarette on a stove burner, returned to the couch, and then told the CCOs that they "weren't going to arrest him that day, if [they] wanted him to go to jail, [they] needed to call real cops." VRP (June 4, 2009) at 42.

To "defuse the situation," Curtright started to call the dispatcher to request assistance from the Lewis County Sheriff's Office. VRP (June 4, 2009) at 43. Hall stood up, walked past Curtright, picked up a backpack, and declared that if he (Hall) was going to jail he was "[']going to go take a shower.[']" VRP (June 4, 2009) at 43. Uncomfortable with Hall's moving around, Curtright ended his telephone call and told Hall that he would have to remain seated on the couch

[2] This warrant was apparently never issued.

if he wanted a deputy to arrest him. Hall sat down for a few seconds, then stood back up, and said, "[']F[**]k it. I'm going to go take a shower.[']" VRP (June 4, 2009) at 44.

Hall grabbed his bag and started to walk past Curtright. Fearing that the CCOs were "losing control of the situation," Curtright grabbed Hall's right arm and pushed him towards the couch. VRP (June 4, 2009) at 44. When Hall pushed back, Curtright grabbed Hall's left elbow and "took [Hall] to the ground." VRP (June 4, 2009) at 45. Hall landed on his stomach with his hands underneath him; Curtright straddled Hall's back with his (Curtright's) knees on the floor. VRP (June 4, 2009) at 45, 59, 79. To gain control of Hall's hands for handcuffing, Curtright used a "crossface technique," which involved putting his forearm across Hall's "eye socket" and pulling back Hall's head and neck. VRP (June 4, 2009) at 60. This hold was intended to cause pain and to compel Hall to comply. When Curtright felt Hall start to comply, Curtright loosened his grip on Hall. Curtright then felt Hall "sink his chin," "turn into [his (Curtright's)] forearm," and bite his forearm. VRP (June 4, 2009) at 54.

The CCOs eventually gained control of Hall's hands and restrained him. Once Hall was secured, Curtright showed Kelley the fresh bite mark on his (Curtright's) forearm.

II. Procedure

The State charged Hall with custodial assault under RCW 9A.36.100(c)(i) and resisting arrest under RCW 9A.76.040. At trial, Curtright and Kelley testified as described above.

Hall testified in his defense. He admitted he knew that Kelley was his (Hall's) CCO and that Curtright had shown him a badge. He claimed that (1) he had been unaware of any warrant; (2) when the CCOs told him about the warrant, he had asked them to call the sheriff; and (3)

when the CCOs did not call the sheriff, Hall's mother tried to call. Hall denied having been "verbally aggressive" with the CCOs. VRP (June 4, 2009) at 93.

Hall further testified that, after talking to the CCOs for about 30 minutes and trying to persuade them to call the sheriff, (1) he attempted to leave the room with his backpack; (2) Curtright hit him in the back; (3) he (Hall) "bounced off the couch" and landed on the ground with his hands underneath him to protect his face, VRP (June 4, 2009) at 95; (4) he bit Curtright's arm, which was across his (Hall's) mouth; and (5) Curtright pulled back on his (Hall's) head, "obstruct[ing]" his "airway," VRP (June 4, 2009) at 97, for five to ten seconds.

The jury found Hall guilty on both charges. The trial court imposed separate, concurrent sentences for each conviction. Hall appeals.

ANALYSIS

I. Sufficient Evidence

Hall argues that the evidence was insufficient to support the convictions. We disagree.

When evaluating the sufficiency of the evidence, we view the evidence in a light most favorable to the State to determine whether any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. *State v. Ortega-Martinez*, 124 Wn.2d 702, 708, 881 P.2d 231 (1994) (quoting *State v. Rempel*, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990)). We consider circumstantial evidence to be equally reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980) (citing *State v. Gosby*, 85 Wn.2d 758, 539 P.2d 680 (1975)). We defer to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of the evidence. *See State v. Camarillo*, 115 Wn.2d

60, 71, 794 P.2d 850 (1990).

Hall first argues that the evidence failed to establish that he intentionally assaulted Curtright because the evidence showed only that he bit Curtright's arm in response to Curtright's obstructing his (Hall's) airway. But Curtright testified that he used a "crossface technique," which involved putting his forearm across Hall's "eye socket" and pulling back his head and neck, VRP (June 4, 2009) at 60; when Curtright felt Hall start to let him (Curtright) control his (Hall's) hands, Curtright loosened his grip on Hall and felt Hall "sink his chin," "turn into [his (Curtright's)] forearm," and bite his forearm. VRP (June 4, 2009) at 54. Based on this evidence, a rational trier of fact could have found that Hall intentionally bit Curtright. Accordingly, this argument fails.

Hall next argues that the evidence failed to establish that he intentionally resisted arrest. To convict Hall of resisting arrest, the State had to prove that he intentionally prevented or attempted to prevent a peace officer from lawfully arresting him. RCW 9A.76.040(1). Taken in the light most favorable to the State, the evidence established that (1) Hall knew that the CCOs intended to arrest him; (2) he told the CCOs that he would not allow them to arrest him; (3) he threatened to harm the CCOs if they touched him; (4) he attempted to leave the room after Curtright instructed him to stay in the room; and (5) he struggled with Curtright when Curtright attempted to physically restrain him (Hall). This evidence would allow a reasonable jury to conclude that Hall intentionally attempted to prevent the CCOs from taking him into custody. Thus, this argument also fails.

We hold, therefore, that the evidence was sufficient to support Hall's convictions.

II. No Double Jeopardy

Finally, Hall argues that his two convictions constitute double jeopardy. Again, we disagree.

A. Standard of Review

We review a double jeopardy claim de novo.[3] *In re Pers. Restraint of Francis*, ___ Wn.2d ___, 242 P.3d 866, 869 (2010) (quoting *State v. Knight*, 162 Wn.2d 806, 810, 174 P.3d 1167 (2008)). Courts may not enter multiple convictions for the same offense without putting the defendant in double jeopardy. *State v. Freeman*, 153 Wn.2d 765, 771, 108 P.3d 753 (2005) (citing *State Vladovic*, 99 Wn.2d 413, 422, 662 P.2d 853 (1983)). "Because the legislature has the power to define offenses, whether two offenses are separate offenses hinges upon whether the legislature intended them to be separate." *Francis*, 242 P.3d at 869 (citing *Freeman*, 153 Wn.2d at 771-72).

To determine the legislature's intent, we look to "any express or implicit representations of legislative intent." *Francis*, 242 P.3d at 869 (citing *Freeman*, 153 Wn.2d at 771-72). If there are no indications of legislative intent in the statutes, we next consider: "(a) the *Blockburger*[4] tests, (b) the merger doctrine, and (c) whether there was an independent purpose or effect for each offense." *Francis*, 242 P.3d at 869 (citing *Freeman*, 153 Wn.2d at 772-73).

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[3] The Fifth Amendment to the United States Constitution prohibits the government from putting any person in jeopardy twice for the same offense. We interpret the Washington State Constitution's analogous double jeopardy clause (*see* Wash. Const. art. I, § 9) in the same way that the United States Supreme Court interprets the Fifth Amendment. *State v. Gocken*, 127 Wn.2d 95, 107, 896 P.2d 1267(1995).

[4] *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932).

B. *Blockburger* Tests

RCW 9A.76.040(1) defines "resisting arrest" as follows: "A person is guilty of resisting arrest if he intentionally prevents or attempts to prevent a peace officer from lawfully arresting him." RCW 9A.36.100(1)(c)(i) defines "custodial assault" as follows:

> (1) A person is guilty of custodial assault if that person is not guilty of an assault in the first or second degree and where the person:
> . . .
> (c)(i) Assaults a full or part-time community correction officer while the officer is performing official duties[.]

Neither statute provides any express or implied indication of whether the legislature intended to allow these offenses to be considered as separate offenses.

Furthermore, these statutes are located in different chapters of the criminal code. And each prohibits different types of conduct and promotes different purposes: The purpose of the custodial assault statute is to prevent assaults against individuals of a certain status. In contrast, the purpose of the resisting arrest statute is to prevent individuals from resisting being taken into lawful custody, regardless of whether that resistance involves an assault. Accordingly, we must turn to the *Blockburger* tests:[5]

> *Blockburger* is [a] rule of statutory construction specifically designed to determine legislative intent in the context of double jeopardy. Under *Blockburger*, we presume that the legislature did not intend to punish criminal conduct twice when the evidence required to support a conviction upon one of the charged crimes would have been sufficient to warrant a conviction upon the other. Accordingly, if the crimes, as charged and proved, are the same in law and in fact, they may not be punished separately absent clear legislative intent to the contrary. We consider the elements of the crimes as charged and proved, not merely as the level of an abstract articulation of the elements. However, the mere fact that the same conduct is used to prove each crime is not dispositive.

[5] *See Francis*, 242 P.3d at 869.

Freeman, 153 Wn.2d at 776-777 (citations, emphasis, and internal quotations omitted).

Here, a custodial assault conviction required proof of an assault, an element not required to prove resisting arrest; and a resisting arrest conviction required proof that Hall intentionally prevented or attempted to prevent his lawful arrest, an element not required to prove custodial assault. Additionally, examining these elements under the facts here, we note that the custodial assault could have been considered part of Hall's attempt to resist arrest; nevertheless, his threats against the CCOs, his verbal resistance, and his struggle with Curtright, without considering the assault, were alone sufficient to establish resisting arrest. Furthermore, Hall's assault against Curtright could have been established even if its purpose had not been to resist arrest.

Accordingly, these two offenses were not the same in fact or law. Therefore, we hold that these two convictions did not place Hall in double jeopardy under the *Blockburger* tests.

C. Merger Doctrine

We next examine the merger doctrine. *See Francis*, 242 P.3d at 869. The merger doctrine applies only when the legislature has clearly indicated that, to prove a particular degree of the crime, the State must prove, not only that the defendant committed a crime, but also that the crime "'was accompanied by an act which is defined as a crime elsewhere in the criminal statutes.'" *Freeman*, 153 Wn.2d at 778 (quoting *Vladovic*, 99 Wn.2d at 421). Because neither offense charged and proved here was "accompanied by an act . . . defined as a crime elsewhere in the criminal statutes," *Freeman*, 153 Wn.2d at 778, the merger doctrine did not operate to place Hall in double jeopardy. Accordingly, Hall's double jeopardy argument fails on this second

ground as well.

D. Independent Purpose or Effect

Finally, we consider whether there was an "independent purpose or effect for each offense." *Francis*, 242 P.3d at 869 (citing *Freeman*, 153 Wn.2d at 772-73). We hold that there was.

"[O]ffenses may in fact be separate when there is a separate injury to . . . 'the person or property of the victim or others, which is separate and distinct from and not merely incidental to the crime of which it forms an element.'" *Francis*, 242 P.3d at 870 (quoting *Freeman*, 153 Wn.2d at 778-79). Here, the assault injured Curtright. And that injury was distinct from Hall's resisting arrest, which was arguably complete when he refused to allow the CCOs to arrest him and continued to disregard or to disobey their requests.[6]

We hold, therefore, that the *Blockburger* test, the merger doctrine, and the independent purpose and effect test all demonstrate that the custodial assault and the resisting arrest were two

[6] This reasoning also supports our conclusion in the preceding subsection of this Analysis that the two offenses were separate offenses.

separate offenses. Accordingly, Hall's double jeopardy argument fails.

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 pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Worswick, A.C.J.

Van Deren, J.