

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

STATE OF WASHINGTON,
Respondent

v.

B.D.B.,
Appellant.

No. 41864-9-II

UNPUBLISHED OPINION

Van Deren, J. — BDB¹ appeals his juvenile adjudication for second degree assault. He argues that (1) the court commissioner's appointment had expired, thereby violating his right to have his case heard by an elected judge or duly appointed commissioner; and (2) the evidence was insufficient to support his juvenile adjudication of guilt for second degree assault by strangulation. We affirm.

FACTS

During the evening of January 10, 2011,² BDB visited his girlfriend, KS,³ at her great-

¹ Under RAP 3.4, we change the title of the case to the juvenile's initials to protect the juvenile's interests in privacy.

² Initially, there was confusion about the date of the incident. The information was amended at trial to conform to the testimony.

³ We refer to KS, a minor and a victim of a crime, by her initials to protect her privacy.

grandmother's house in Woodland, Washington. BDB and KS watched a movie together in KS's bedroom. The bedroom door was left open a crack and KS's great-grandmother, who was watching television in the room directly outside, checked on them periodically. KS's great-grandmother gave BDB permission to stay the night on the couch.

During the movie, BDB and KS argued about BDB's communicating with another young woman via text message. KS asked BDB, "[W]hy don't you just go be with her?" Report of Proceedings (RP) at 13. BDB became angry and grabbed KS around her neck. BDB said, "Why would I want to be with her when I'm with you?" RP at 14. BDB then let go of KS's neck. While BDB had his hand on KS's neck, she was lying on the bed and BDB was leaning over her. After the incident, KS and BDB continued to watch the movie and then went to bed.

The next morning, KS and BDB resumed their argument. KS became upset after BDB said he would end their relationship. While being comforted by her great-grandmother, KS confided in her that BDB had choked her the previous night. KS's great-grandmother took KS to the Woodland police station to report the incident. A Woodland police officer, James Keller, reviewed KS's written statement, interviewed her, and inspected her neck. Keller did not detect any bruising, redness, or scratches on KB's neck. KS did not complain of any physical effects of the incident. KS told Keller that BDB had his hand on her neck for about 30 seconds. The State charged BDB with second degree assault by strangulation under former RCW 9A.36.021(1)(g) (2007).

Court Commissioner Lisa Tabbut presided over BDB's juvenile adjudication on February 17, 2011, and February 22, 2011. On February 9, 2007, Cowlitz County Superior Court Presiding Judge Stephen M. Warning signed a memorandum acknowledging Tabbut as a court

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commissioner for 2007. On August 26, 2011, Cowlitz County Superior Court Presiding Judge James J. Stonier signed an additional memorandum acknowledging Tabbut as a court commissioner in August 2011. Tabbut signed an oath of office on February 6, 2007, and again on January 3, 2011. In each written oath of office, Tabbut declared under penalty of law that she had “been duly appointed to the office of Court Commissioner of the Superior Court of the State of Washington for Cowlitz County.” 2nd Suppl. Clerks Papers at 14.

KS’s testimony at the juvenile adjudication trial was consistent with the facts outlined above, except that she clarified that BDB had his hand around her neck for six seconds. KS testified about her ability to breathe and how she felt when BDB’s hand was around her neck:

[Defense Counsel]: When he had — when you claim he had his hand on your neck?

[KS:] Yes.

[Defense Counsel:] You didn’t pass out?

[KS:] Oh, no.

[Defense Counsel:] Okay. You — you could still breathe?

[KS:] Yes.

[Defense Counsel:] Okay. He didn’t cut the circulation that you could tell?

[KS:] No.

RP at 36-37.

[The State:] [KS], when he grabbed your throat were you able to breathe?

[KS:] Yes.

[The State:] Was it harder to breathe?

[KS:] Yes.

[The State:] Were you able to scream?

[KS:] If I, yeah, if I wanted to I could have. Yeah.

[The State:] How do you know?

[KS:] Because it wasn’t like I couldn’t breathe. It just felt like something was stuck in my throat, so I think I could have [screamed].

[The State:] You think you could have but you don’t know that you could have?

[KS:] Yes.

[The State:] But your ability to breathe was lessened?

[KS:] Yes.

....

[The State:] [KS], did you feel any pressure on [y]our neck?

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[KS:] Yes.

[The State:] Okay. Did it feel like your neck was being pushed on?

[KS:] Yes.

RP at 38-40.

BDB denied that that he placed his hand around KS's neck. BDB testified that when KS became agitated, he bounced her off his lap and gently put her on the bed next to him. Then he leaned over and put both hands on her shoulders, looked deep into her eyes, and reassured her that he would not cheat on her.

The juvenile court found KS's testimony credible. It also found that BDB placed his hand on KS's throat, which restricted KS's blood flow and interfered with her ability to breathe. The juvenile court concluded that the State had proved every element of second degree assault by strangulation and, thus, adjudicated BDB guilty of second degree assault. BDB timely appeals his juvenile adjudication.

ANALYSIS

I. Authority of Commissioner

BDB first argues that Tabbut was not a duly appointed commissioner and, thus, she lacked authority to preside over his case. He asserts that Tabbut's appointment expired in 2007, and that she was not reappointed until August 26, 2011. This argument lacks merit.

We review questions of law, including statutory construction, de novo. *State v. Bunker*, 169 Wn.2d 571, 577-78, 238 P.3d 487 (2010). We look first to the statute's plain language in order to fulfill our obligation and give effect to legislative intent. *Bunker*, 169 Wn.2d, at 577-78. When faced with an unambiguous statute, we derive the legislature's intent from the plain

language alone. *City of Seattle v. Holifield*, 170 Wn.2d 230, 240, 240 P.3d 1162 (2010).

RCW 2.24.010 provides the statutory authorization for the appointment of commissioners.

It states:

There may be appointed in each county or judicial district, by the judges of the superior court having jurisdiction therein, one or more court commissioners for said county or judicial district. Each such commissioner shall be a citizen of the United States and shall hold the office during the pleasure of the judges making the appointment.

RCW 2.24.010(1). By its plain language, RCW 2.24.010 does not require superior court judges to enter written orders appointing commissioners. Instead, the statute merely requires appointed commissioners to be United States citizens,⁴ and that they “shall hold the office during the pleasure of the judges making the appointment.” RCW 2.24.010(1). Tabbut’s January 3, 2011, oath of office, together with Judge Warning and Judge Stonier’s written memoranda are sufficient to demonstrate her statutory authority as a Cowlitz County court commissioner. Moreover, Tabbut declared under penalty of law that she was a duly appointed commissioner. BDB does not allege that Tabbut made a false declaration. Accordingly, BDB’s challenge to Tabbut’s authority as a commissioner fails.

II. Sufficiency of the Evidence: “Strangulation”

Next, BDB contends that sufficient evidence does not support his adjudication of guilt for second degree assault. BDB concedes the State’s evidence proves that he assaulted KS, but he asserts that the evidence was insufficient to establish strangulation. We disagree.

In determining a sufficiency of the evidence claim, we view the evidence in the light most favorable to the State and ask whether any rational trier of fact could have found guilt beyond a

⁴ BDB does not contend that Tabbut is not a United States citizen.

reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). A claim that the evidence was insufficient admits the truth of the State's evidence and all reasonable inferences drawn from that evidence. *Salinas*, 119 Wn.2d at 201. Credibility determinations are for the trier of fact and are not subject to review. *State v. Thomas*, 150 Wn.2d 821, 874–75, 83 P.3d 970, *abrogated in part on other grounds by Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004).

To adjudicate BDB guilty of second degree assault by strangulation, the State had to prove beyond a reasonable doubt that BDB assaulted another by strangulation, under circumstances not amounting to first degree assault. Former RCW 9A.36.021(1)(g). “‘Strangulation’ means to compress a person's neck, thereby obstructing the person's blood flow or ability to breathe, or doing so with the intent to obstruct the person's blood flow or ability to breathe.” RCW 9A.04.110(26). Because BDB concedes that sufficient evidence exists to convict him for the lesser included offense of fourth degree assault,⁵ we need only address the strangulation element.

KS testified that BDB placed his hand on her neck for 6 seconds, which lessened her ability to breathe. She said it felt as if something was stuck in her throat. She also testified that she felt pressure on her neck and it felt like her neck was being pushed on. The juvenile court found KS's testimony credible, and we do not review credibility determinations. *Thomas*, 150 Wn.2d at 874-75. Accordingly, viewing the evidence in a light most favorable to the State, any reasonable fact finder could find that BDB assaulted KS by strangulation. We affirm BDB's

⁵ “A person is guilty of assault in the fourth degree if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.” RCW 9A.36.041.

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juvenile adjudication of second degree assault by strangulation

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.

Van Deren, J.

We concur:

Hunt, J.

Worswick, C.J.