

FILED

November 15, 2012

**In the Office of the Clerk of Court
WA State Court of Appeals, Division III**

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

STATE OF WASHINGTON,)	No. 30111-7-III
)	
Respondent,)	
)	
v.)	
)	
JACOB STEPHEN BECK,)	UNPUBLISHED OPINION
)	
Appellant.)	
)	

Siddoway, A.C.J. — Jacob Beck was convicted of a number of charges arising out of his attempt to elude capture after a gas theft from a convenience store. He challenges the sufficiency of evidence to support his conviction for second degree assault of a deputy sheriff, arguing that no reasonable juror could conclude that he intended to hit one patrol car at the same time he was trying to elude another. We find sufficient evidence and affirm.

FACTS AND PROCEDURAL BACKGROUND

On the afternoon of January 12, 2011, Jacob Beck drove off from a convenience store in Spokane after filling his car with \$54.51 of gas and then failing to pay. An

employee of the store, Sarah Hipkiss, had already become suspicious of his behavior and had stepped outside to demand that he pay—or to make note of his license plate number, in case he did not. As Mr. Beck quickly pulled out, turned around, and accelerated toward nearby Euclid Avenue, he drove toward Ms. Hipkiss, coming within five feet of hitting her. A customer, Spenser Smith, had stepped outside to back up Ms. Hipkiss as she demanded payment from Mr. Beck, and was injured when his hand, which he had placed on the hood of Mr. Beck's car, was caught in its broken grille as Mr. Beck began to drive off. Mr. Beck also came within several feet of Mr. Smith as he sped out of the parking lot.

Employees of the store immediately reported the crime to local police, and a description of Mr. Beck's car was broadcast to patrol officers. The initial report of the crime as a gas theft was upgraded to robbery when it was learned that someone had been injured.

Officer Dan Lesser was in the vicinity when he heard the description of Mr. Beck's car and its license plate number and saw the car pass him, traveling eastbound. He turned around and began following Mr. Beck. Upon hearing the dispatcher upgrade the crime to robbery, he activated his lights and siren. Mr. Beck responded by accelerating despite icy winter road conditions, driving at speeds of 55 to 60 miles an hour and running red lights and through controlled intersections in his effort to elude the

officer.

Spokane County Deputy Sheriff Harold Whapeles was nearby when he heard that Officer Lesser was in pursuit of Mr. Beck, who was by then traveling westbound on Sprague Avenue, coming his way. The deputy stopped his marked Spokane Valley Police vehicle at the intersection of Havana and Sprague and activated all of his emergency lights, in order to clear the westbound lane of Sprague and protect other drivers from the approaching police pursuit. He positioned his car in the south side of the intersection, centrally enough to block northbound and southbound traffic. As Mr. Beck and Officer Lesser neared the intersection, Deputy Whapeles noticed that rather than heading toward the clear westbound lane—or even toward the right, in order to head north on Havana—Mr. Beck’s car was coming toward his patrol car, in which he was still sitting. In an attempt to avoid a head-on collision, the deputy turned his wheels hard to the left and put his patrol car in reverse. Upon entering the intersection, Mr. Beck belatedly changed direction, turning to the right, but he still collided with the right passenger bar on the front of the patrol car bumper. Mr. Beck then sped north on Havana.

The force of the collision spun the patrol car around, but the deputy quickly turned it back toward the north and joined the pursuit. He and Officer Lesser continued their high-speed chase of Mr. Beck until their sergeant ordered termination of the pursuit for safety reasons. Officer Lesser would later testify, having re-driven the route of the

pursuit at the request of a prosecutor, that Mr. Beck had attempted to elude him for 3.4 miles by the time he collided with Deputy Whapeles at Sprague and Havana. He testified that Mr. Beck attempted to elude officers for a total of 6.7 miles before the pursuit was terminated.

Mr. Beck was taken into custody after abandoning his car, shortly after termination of the pursuit—but not before rear-ending a civilian driver at a controlled intersection. He drove away from that accident without stopping.

Mr. Beck was charged with three counts of second degree assault (against Ms. Hipkiss, Mr. Smith, and Deputy Whapeles); attempt to elude a police vehicle; third degree theft; and hit and run, for his final accident with the civilian driver.

At trial, Mr. Beck conceded that he was guilty of third degree theft, attempt to elude, and hit and run. He contested the three felony counts of second degree assault, however. The jury acquitted Mr. Beck of the charges of assaulting Ms. Hipkiss and Mr. Smith but found him guilty of the remaining charges, including the assault of Deputy Whapeles.

Mr. Beck appeals. His sole challenge is to the sufficiency of the evidence to sustain his conviction of second degree assault against Deputy Whapeles.

ANALYSIS

Mr. Beck argues that the State failed to prove the specific intent required for

assault beyond a reasonable doubt. Why, he argues, would he intentionally try to hit the sheriff's deputy? He admitted guilt for the crime of attempting to elude and admitted to the jury that he was running away from the police. According to Mr. Beck, his collision with the deputy "was an accident, plain and simple." Br. of Appellant at 7.

A criminal defendant may always challenge the sufficiency of the evidence supporting a conviction for the first time on appeal. *State v. Hickman*, 135 Wn.2d 97, 103 n.3, 954 P.2d 900 (1998) (noting that "[a]ppel is the first time sufficiency of evidence may realistically be raised"). Sufficient evidence supports a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt. *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). On appeal, we draw all reasonable inferences from the evidence in favor of the State and interpret them most strongly against the defendant. *Id.* Specific criminal intent can be inferred from conduct that plainly indicates such intent as a matter of logical probability. *State v. Abuan*, 161 Wn. App. 135, 155, 257 P.3d 1 (2011).

The court defers to the fact finder on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). The fact that a trial or appellate court may conclude the evidence is not convincing, or may find that evidence hard to reconcile in some of its aspects, or

may think some evidence appears to refute or negate guilt, or to cast doubt thereon, does not justify the court setting aside the jury's verdict. *State v. Randecker*, 79 Wn.2d 512, 517-18, 487 P.2d 1295 (1971). It is only necessary for the court to be satisfied that there is substantial evidence to support the State's case or the particular element in question. *Id.* at 518.

RCW 9A.36.021(1)(c) provides that “[a] person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree: [a]ssaults another with a deadly weapon.” The jury was instructed that a car can be a deadly weapon if, “under the circumstances in which it is used, attempted to be used, or threatened to be used, [it] is readily capable of causing death or substantial bodily harm.” Report of Proceedings (RP) (June 8, 2011) at 253 (Instruction 12).

Because “assault” is not defined in the statute, courts resort to the common law definitions. *State v. Byrd*, 125 Wn.2d 707, 712, 887 P.2d 396 (1995). Washington recognizes three common law definitions of assault, two of which were relied upon by the State here. The jury was instructed that

[a]n assault is an act, with unlawful force, *done with intent to inflict bodily injury upon another*, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

An assault is also an act, with unlawful force, *done with the intent to create in another apprehension and fear of bodily injury* and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

RP (June 8, 2011) at 251-52 (Instruction 9) (emphasis added); *and see State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009). Under the common law, “specific intent either to create apprehension of bodily harm or to cause bodily harm is an essential element of assault in the second degree.” *Byrd*, 125 Wn.2d at 713.

Mr. Beck challenges the sufficiency of evidence to establish only his intent, either to inflict bodily injury upon Detective Whapeles or to create in the detective an apprehension and fear of bodily injury. We review the entire record to determine whether a rational trier of fact had substantial evidence to find the required element.

In testifying in his own defense, Mr. Beck attributed all of his actions on the afternoon of the theft and chase to his “panic” upon being confronted by Mr. Smith at the gas station. RP (June 8, 2011) at 216. According to Mr. Beck, he was sitting in his car, pulling cash from his pockets to pay for the gas, when Mr. Smith began yelling and swearing at him, pounding on the hood of his car, and attempting to open the passenger door. Mr. Beck told the jury that he had a “panic attack” in response to Mr. Smith’s actions and was not thinking straight after that; according to him, he needed to get home where he could calm down and have someone help him review, rationally, what had happened. *Id.* He attributed his collision with Deputy Whapeles to the fact that he intended to turn south at the intersection of Sprague and Havana, in his effort to get

home, only to realize—too late—that the deputy’s patrol car was blocking the south part of the intersection. He denied intending to cause apprehension or bodily injury.

The jury heard from three witnesses to Mr. Beck’s collision with Deputy Whapeles. Mr. Beck testified to that part of the police pursuit as follows:

- Q. So you’re going westbound on Sprague. Then what happens?
A. I attempt to turn on Havana. And by the time I went into the turn lane and started to come around the corner, I saw a patrol car sitting there. And he started pulling around in front of me. And I couldn’t stop in time. I tried to stop, but the only thing I could do is, on ice and snow, I just slid.
- Q. Which way are you trying to turn on Havana?
A. I was trying to turn south.
- Q. Is the deputy’s vehicle blocking that turn?
A. Yes.
- Q. When did you notice the deputy’s car sitting there blocking—that he was blocking your path?
A. At first I thought I had a clear path, and then once I started into the turn—I was already into the intersection—he started to spin around. And at that point I realized I wasn’t going to make it and I couldn’t stop.
- Q. So the officer’s vehicle started to move as you’re coming in?
A. Yes.
- Q. And that partially blocked the intersection as well?
A. It blocked—it brought him all the way across the front of me. And then I barely clipped his left front end.
- Q. We heard testimony that there would have been a clear shot to continue westbound.
A. Yes.
- Q. Why did you not just continue westbound?
A. I was trying to get home to the south and back.
- Q. So your intention was to make that south turn?
A. My only thought in my head was to get home where I was in my comfort zone or where I felt comfortable and I could figure out what was going on.

- Q. We also heard testimony that heading north on Havana would have been open. Is that for the same reason why you didn't try that first?
- A. Yes.
- Q. As you're coming into this intersection and you see Deputy Whapeles' vehicle there, did you try to hit the deputy?
- A. Absolutely not.
- Q. Was your intent to create fear in him?
- A. No.
- Q. Was your intent to harm him?
- A. No.
- Q. Was your intent to hit him at all?
- A. No. I was trying to get away from the cops. I wasn't trying to hit into them by any means.
- Q. You were actually trying to avoid officers?
- A. Absolutely. I had to get home, was my only concern at that point.
- Q. Are the conditions at this part of town similar to the parking lot, slushy, icy?
- A. Yes. There was a good seven or eight inches of snow on the ground, and ice.
- Q. After—you did make some contact with the officer; is that correct?
- A. Yes.
- Q. After you made this contact with the officer, then what did you do?
- A. I took the only other clear route I could see. I took north.

RP (June 8, 2011) at 218-21.

But Officer Lesser testified to a different perception, both of Mr. Beck's ability to see the deputy's patrol car and of Mr. Beck's actions:

- Q. And as you approached the intersection, what observations did you make of the defendant's vehicle?
- A. As we approached the intersection there at Havana, both the westbound lanes were actually blocked with traffic that was stopped for the red light. The defendant cut into the turn lane and then drove straight at the Valley police car.
- Q. Did you see that vehicle, the defendant's vehicle make contact with the patrol car?

- A. Yes. He struck the patrol car on the right front corner which kind of caused them both to spin, and then the defendant turned and went northbound on Havana.
- Q. Did you observe any brake lights on the defendant's vehicle when it entered the intersection?
- A. No, I did not.
- Q. And what alternatives, from your point of view, did the defendant have with respect to going through that intersection?
- A. It looked to me that he had a very clear lane of travel. All he would have had to do was cut back and he could have continued going westbound on Sprague.
- Q. Could he have driven straight through as well?
- A. Correct.

Id. at 191-92. The officer later testified:

- Q. Officer, how far were you from Deputy Whapeles' vehicle when you first saw him?
- A. When I first—
- Q. When you were first able to observe Deputy Whapeles, how far away were you?
- A. Probably four to five blocks.
- Q. How far ahead was the defendant from you?
- A. He was probably two and a half to three blocks at that time.
- Q. Did you have any difficulty making out the fact that it was a patrol car with its emergency lights on in that lane?
- A. Absolutely not. He had all of his overhead lights activated, his flashing wigwags on, his headlights.

Id. at 199-200.

Deputy Whapeles' testimony also undercut Mr. Beck's testimony that he had no idea he was headed for a collision with the patrol car:

- A. When he came to the intersection, he started to come—I guess this would be south into the intersection here. At this point right here I made eye contact with him and realized that we're probably going to

have contact between our two vehicles.

Q. Why did you think that?

A. Well, I could see that he was—his—the nose of his vehicle was coming straight towards the nose of my vehicle here. This was a day that was very snowy out. It just snowed the night before. And I could see that he was coming straight towards me that way.

Q. Okay. As he's coming through the intersection, what happens? If you could draw it.

A. Sure. As he was coming through the intersection here like this, I realized that we were going to hit. And I didn't want a head-on collision at this point. His speed was—I'm going to—rough estimate, around 35. I was at a dead stop. I didn't want to be hit head on at that speed, so I cranked my wheels hard to the left, and I was hoping that our rear-wheel drive vehicles would drive pretty nice through the snow. I gave myself some gas as much as I could and spun in front of my vehicle.

Q. Can you show impact, please.

A. Sure. As he came through, I was able to move my back end out just a bit, which caused him—sorry, to move my car to where the front was here now. And he was able to glance off the front right passenger bar that we have on the front of the bumpers.

What happened after that is my vehicle spun out this way where I was kind of facing this and his vehicle kind of went that way where it was facing that way.

Q. Can you draw a line then how he proceeded through and what direction.

A. Sure. He proceeded northbound through Havana and Sprague, north on Havana. I was able to flip my vehicle around and then follow him from that point. Officer Lesser was coming through the intersection here and got in behind me. So we ended up going northbound with—this is the suspect vehicle and then my vehicle—I'll put "S" for sheriff—and then Officer Lesser's vehicle, I'll put "C" for city.

....

Q. You estimate as the vehicle enters the intersection it's going approximately 35 miles an hour?

A. I'm going to guess that's the approximate speed on that. You know, it was pretty hard to tell, as I was standing straight and it's coming

straight at you, to guess—estimate the speed on that, but I'm going to guess it around there.

- Q. As the vehicle makes impact with you, do you believe it's going faster or slower than 35 miles an hour?
- A. I think it's going about 35 miles an hour.
- Q. What alternatives did the defendant's vehicle—or the defendant have other than turning the vehicle toward you and striking you, as you perceived it?
- A. He still had a clear lane going westbound that was completely open. Traffic had stopped.
- ...
- Q. When he came into the intersection, did he drive his car toward you or was he driving straight? Can you describe that.
- A. We made—when we made eye contact, it was just east of the intersection. The vehicle was coming straight at me. You know, I don't know if it was turning that way, just the way that it came through the intersection, but, you know, there was no way that it was not going to hit me at that point.
- Q. Okay. But there was an open lane of travel, the travel lane that he was in; is that correct?
- A. Correct. There was an open lane there. The vehicles had stopped on both sides and there was a clear shot through.
- Q. What do you mean that you made eye contact with him?
- A. Well, I was watching the vehicle come through. That's how I remember—or I was able to identify him. We had a really good view of each other as he's coming at me and I was looking at him. And I was able to visually see him and have him see me. I could tell that he saw I was right there.
- Q. Do you know whether or not the defendant applied the brakes prior to entering the intersection?
- A. I don't because of the snow.

RP (June 7, 2011) at 129-33, and later:

- Q. Deputy Whapeles, now, we're back at the intersection where the collision took place. And as you realize that you're going to be struck by the defendant's car, what range of emotions do you have at that point in time?

- A. Well, it was a little bit of fear because you don't want to get hit by a vehicle. It could cause a lot of damage, not only to the vehicle but to yourself. The other thing that's always, other than nerve-racking, is where your vehicle ends up. You could hit another vehicle or cause damage to another vehicle or hurt somebody else in another car. And then just don't want to get hit because the whiplash effect and everything else that goes through a car wreck at 35 miles an hour can cause a lot of damage to the body.
- Q. Specifically what were you feeling upon impact when you were struck?
- A. It was very jarring. It snapped my neck back to the left actually and then came back around. And fortunately the momentum carried us both around in the snow, so it lessened the impact quite a bit.
- Q. What range of emotion were you feeling when you were hit?
- A. That I just—I was fearful that I was going to get hurt.
- Q. Did you get hurt?
- A. I was. I got a little bit of stiffness in the neck the next day from the whiplash and a little bit of shoulder soreness. But I recovered after awhile.
- Q. If this would have been on pavement, would your damages to your vehicle, do you believe, or injuries to you been different?
- A. I think it would have been much different. Like I say, the momentum along with the snow—it was a day where it snowed really bad the night before and then it had heated up the next day, so the roads were very, very soft and mushy. And if it wasn't for the fact that I was spinning my back tires and that snow was on the ground, if it was straight pavement, it would have been a much worse collision.

Id. at 137-39.

From this testimony, the jury might have found Mr. Beck's explanation of his actions and intent to be credible. But it might also rationally have found that Mr. Beck's testimony was not credible. The State's theory was that Mr. Beck was, indeed, trying to

No. 30111-7-III
State v. Beck

elude Officer Lesser, but could see that a second patrol car was positioned to join the pursuit, and decided to attempt to disable the car and its driver. The jury was entitled to infer intent from Mr. Beck's actions. The fact that the jury acquitted Mr. Beck of two of the assault charges, but not this one, suggests that it was exercising its responsibility to critically examine both sides' arguments and evidence.

Viewing the evidence in the light most favorable to the State, substantial evidence supports the required element of intent.

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, A.C.J.

WE CONCUR:

Sweeney, J.

Kulik, J.