

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

STATE OF WASHINGTON,)	No. 61206-9-I
)	
Respondent,)	
)	
v.)	
)	
MARTIN KAISER,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: November 16, 2009
)	

Ellington, J. — Martin Kaiser appeals his conviction for second degree assault arguing that the trial court abused its discretion by denying his CrR 8.3(b) motion to dismiss and that the State failed to produce sufficient evidence to support his conviction. Given Kaiser’s failure to demonstrate that the State’s delayed response to a discovery order prejudicially affected his right to a fair trial, the trial court properly denied his motion to dismiss. Because the State presented sufficient evidence for a rational trier of fact to have found beyond a reasonable doubt that Kaiser acted intentionally, we affirm.

Background

Bethany Watson served a beer to Martin Kaiser at the Central Saloon around 1:00 a.m. on July 2, 2006. Kaiser told Watson he was offended by her shirt and

asked to speak to her manager. Watson asked her manager, Rory Trunkhill, to speak with Kaiser, who was sitting at the bar. Standing behind the bar, Trunkhill told Kaiser to leave. Randall Manning, the Central's head of security, stood behind Kaiser. Manning pushed Kaiser's beer glass down onto the bar. As Trunkhill reached for the glass to take it away, Kaiser leaned across the bar and smashed the beer glass into Trunkhill's face, causing profuse bleeding. Trunkhill later received 27 stitches on his face.

On July 6, 2006, the State charged Kaiser with second degree assault. On the first day of trial, December 4, 2007, Kaiser asked the trial court to dismiss the charges under CrR 8.3(b) for government mismanagement because the State failed to provide discovery as ordered. In particular, he complained that the State failed to provide a statement from Sossity Hervey, that he had not received information regarding Watson until October 2007, and that he had just interviewed Manning by telephone the previous evening. In response, the prosecutor explained that the previously assigned trial deputy was on medical leave with cardiac problems, that she had provided information and arranged for defense interviews of witnesses since she took over the case in October 2007, and that she had just located Hervey in Rhode Island and did not intend to call her as a witness. The trial court denied Kaiser's motion to dismiss, observing that the case was not complicated, the defense had completed interviews of the available witnesses, and the motion was untimely.

At trial, Watson testified that as Trunkhill told Kaiser to leave, Trunkhill "went to grab for the pint glass and didn't get a very good grip on it," because Kaiser "was

holding on to it as well and had a better grip.”¹ Then Kaiser “came over the bar and shoved the pint glass right in [Trunkhill’s] face.”² Manning testified that as he stood behind Kaiser, Trunkhill said that Kaiser “has to go.”³ When Kaiser lifted his beer glass to take a drink, Manning tried to take the glass from Kaiser. Because Kaiser held onto the glass, Manning pushed the glass down onto the bar. As he tried to warn Trunkhill about the glass, Manning saw Kaiser move his arm and “thought that he might have swung.”⁴ Manning pulled Kaiser off the bar and then looked over at Trunkhill, who was bleeding.

Trunkhill testified that he was standing behind the bar directly in front of Kaiser, who was seated on a bar stool. Manning stood behind Kaiser with his hand on top of Kaiser’s beer glass, which was on the bar. Trunkhill noticed that Kaiser’s “eyes were really weird,” “like he was panicked almost,” and “really strange.”⁵ Trunkhill told Manning to “get him out of here.”⁶ The next thing Trunkhill knew, the glass was shattering on his face.

Kaiser testified that after his disagreement with Watson, Trunkhill agreed that he could finish his beer and then leave. Minutes later, while Kaiser was speaking with other patrons, he was suddenly grabbed from behind and began to lose his balance.

¹ Report of Proceedings (Dec. 5, 2007) at 194.

² Id.

³ Id. at 237.

⁴ Id. at 238.

⁵ Id. at 271, 276.

⁶ Id. at 271.

He resisted as he was grabbed by the shoulder and another hand grabbed the beer glass he was holding. When the unseen assailant suddenly let him go, the glass accidentally slipped out of his hand. He later realized that the glass had hit someone.

The jury found Kaiser guilty as charged and the trial court imposed a standard range sentence. Kaiser appeals.

Discussion

Kaiser first contends that his conviction should be reversed and the charge dismissed due to prosecutorial mismanagement. Under CrR 8.3(b), a court may dismiss a case “due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused’s right to a fair trial.” Simple mismanagement is sufficient to dismiss charges as long as there has been prejudice to a defendant’s right to a fair trial.⁷ We review a trial court’s decision on a CrR 8.3(b) motion to dismiss for a manifest abuse of discretion.⁸

Kaiser claims that the delay between arraignment and trial, as well as the State’s failure to comply with discovery orders, demonstrate mismanagement requiring dismissal of the charge against him.

The court granted numerous continuances for various reasons between the

⁷ State v. Michielli, 132 Wn.2d 229, 239–40, 937 P.2d 587 (1997) (affirming dismissal under CrR 8.3(b) where State amended single count information three business days before trial by adding four additional counts based on evidence in State’s possession before filing original charge three months earlier); State v. Sherman, 59 Wn. App. 763, 767–68, 773, 801 P.2d 274 (1990) (affirming dismissal under CrR 8.3(b) where State failed to provide IRS records as agreed at omnibus, moved for reconsideration of the omnibus order and to amend the information after scheduled trial date, and attempted to expand the witness list on day of trial).

⁸ State v. Blackwell, 120 Wn.2d 822, 830, 845 P.2d 1017 (1993).

July 6, 2006 charging date and commencement of trial on December 4, 2007.

Although a few orders continuing the case note that the defense “reserves motions” or “reserves objections based on discovery violations,”⁹ the record on review indicates that the majority of these continuances were agreed and Kaiser did not file any motions regarding discovery. Some of the reasons stated for the orders include the prosecutor’s vacation, illness, trial schedule, and family medical emergency leave, defense counsel’s trial schedule, and the defendant’s failure to appear. Kaiser fails to argue or establish that any of these continuances resulted from government mismanagement.

Regarding discovery, in March 2007, the court ordered the State to provide various items including the “full name, address, phone of witness ‘Bethany’” and a “statement of Sossity Hervey” by April 5, 2007.¹⁰ On the day of trial when Kaiser made his CrR 8.3(b) motion to dismiss, he admitted that he received information from Bethany Watson in late October 2007. And Kaiser did not dispute the prosecutor’s description of her difficulty locating Hervey until shortly before trial or her decision not to call Hervey as a witness. Aside from the mere fact of delay, Kaiser fails to identify anything in the record to require a finding of government mismanagement regarding discovery.

Moreover, to establish prejudice, Kaiser merely claims that he was forced to go to trial with inadequate preparation because the State did not comply with the

⁹ Clerk’s Papers at 69, 71, 95.

¹⁰ Clerk’s Papers at 57.

discovery order in a timely manner. But Kaiser fails to identify any evidence presented by the State at trial of which he was not aware before trial or for which he was not adequately prepared. The court properly denied Kaiser's motion to dismiss under CrR 8.3.^{11 12}

Kaiser also contends the State failed to present sufficient evidence that he acted intentionally, an essential element of the charge of second degree assault.¹³ Evidence is sufficient if, when viewed in the light most favorable to the State, any rational trier of fact could have found each element of the offense beyond a reasonable doubt.¹⁴ A challenge to the sufficiency of the evidence admits the truth of the State's evidence and inferences reasonably drawn therefrom.¹⁵

Kaiser argues that the State failed to present sufficient evidence because the State's witnesses "substantially and materially contradict each other."¹⁶ He complains that testimony provided by Manning and Trunkhill contradicted that of Watson and another witness on a variety of details. But we defer to the trier of fact on issues of

¹¹ See, e.g., State v. Cannon, 130 Wn.2d 313, 328–29, 922 P.2d 1293 (1996) (affirming denial of motion to dismiss for State's mishandling of blood sample and slow production of laboratory test results where no new facts were interjected into the case and defendant could not show prejudice).

¹² Although Kaiser assigns error to the trial court's denial of his alternative motion to continue, he does not include any argument or authority supporting the claim of error in his brief. RAP 10.3(a)(6). Therefore, we need not address it.

¹³ "A person is guilty of assault in the second degree if he . . . [i]ntentionally assaults another and thereby recklessly inflicts substantial bodily harm." RCW 9A.36.021(1)(a).

¹⁴ State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

¹⁵ Id.

¹⁶ Appellant's Br. at 43.

