

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	DIVISION ONE
Respondent,)	
)	No. 62946-8-I
v.)	
)	
RALPH REDMOND III,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: November 9, 2009
_____)	

Dwyer, A.C.J. — In this domestic violence, child abuse prosecution, a jury convicted Ralph Redmond III of assault in the fourth degree. Redmond challenges the sufficiency of the evidence supporting the jury’s determination that his actions were not lawful, asserting that his actions were lawful under the “parental discipline defense.” Because there was sufficient evidence from which the jury could find that Redmond’s use of force was unreasonable, we affirm.

I

Redmond’s children were at the house of Helen Jones, their grandmother, on May 8, 2008. When Redmond arrived to pick up the children, he discovered that R.M., his 12 year old daughter, had been talking on the telephone to a man with whom Redmond had forbidden her to talk. Jones, R.M.’s great-aunt Linda Barron, and Redmond’s two other children were all in either the living room or

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dining room, near where Redmond and R.M. were talking. Both Jones and Barron testified that Redmond hit R.M. in the head and she fell to the floor. Once she stood up, Redmond hit her again and she again fell to the floor. Both Jones and Barron testified that Redmond then proceeded to kick R.M. multiple times in her side while she was on the floor. R.M. winced and looked scared. Jones intervened, asking Redmond to stop, at which point R.M. got up again and Redmond slapped her once more in the back of the head. When interviewed by the police, Barron stated that Redmond had used a closed fist to hit R.M. However, at trial Barron initially testified that she remembered Redmond using an open hand every time but, after further questioning, she admitted that she could not remember precisely and that her earlier statements to the police would be more accurate. The State then had Barron read a transcript of a telephone conversation with the police in which she stated that Redmond hit R.M. with a fist.

During the incident, no one else intervened and no one called the police. However, the next day Barron went to the police station to make a report because she had been unable to sleep due to her concern about R.M.'s welfare. At trial, Redmond admitted to hitting his daughter, but denied using a closed fist or kicking her. He also stated that he had not actually hit R.M. the first time she fell to the floor. Rather, he testified, she had just overreacted to him raising his hand. Barron, Jones, and Redmond testified that R.M. had no apparent bruising

or other injuries. However, the State submitted a photograph taken five days after the incident which showed that R.M. had some sort of marking or darkness around her right eye. The jury convicted Redmond of one count of assault in the fourth degree. He appeals.

II

Redmond contends that insufficient evidence was introduced at trial to support his conviction of assault in the fourth degree. In particular, he asserts that the force he used was consistent with his parental right to administer discipline and that the State did not prove that he administered unreasonable or immoderate physical discipline. We disagree.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, any rational trier of fact could have found that the essential elements of the charged crime were proved beyond a reasonable doubt. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). On appeal, all reasonable inferences from the evidence are drawn in favor of the State and interpreted most strongly against the defendant. Hosier, 157 Wn.2d at 8. “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” Salinas, 119 Wn.2d at 201. We will reverse a conviction for insufficient evidence only when no rational trier of fact could have found that all of the elements of the crime were proved beyond a

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reasonable doubt. State v. Smith, 155 Wn.2d 496, 501, 120 P.3d 559 (2005).

In evaluating the sufficiency of the evidence, circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Credibility determinations are for the trier of fact and are not subject to appellate review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

Assault in the fourth degree is defined as an assault not amounting to assault in the first, second, or third degree. RCW 9A.36.041. Because the term “assault” is not statutorily defined, the common law definition applies. State v. Stevens, 158 Wn.2d 304, 310-11, 143 P.3d 817 (2006).

Washington recognizes three common law definitions of assault: (1) an attempt, with unlawful force, to inflict bodily injury upon another; (2) an unlawful touching with criminal intent; and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is incapable of inflicting that harm.

Stevens, 158 Wn.2d at 311. The force or touching must be “unlawful” for a defendant to be convicted of assault.

Corporal punishment of children is not unlawful when such physical discipline is objectively reasonable. State v. Singleton, 41 Wn. App. 721, 723-24, 705 P.2d 825 (1985). RCW 9A.16.100 provides that “the physical discipline of a child is not unlawful when it is reasonable and moderate and is inflicted by a

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parent, teacher, or guardian for purposes of restraining or correcting the child.”

However, the statute allows juries to infer that certain actions are unreasonable:

The following actions are presumed unreasonable when used to correct or restrain a child: (1) Throwing, kicking, burning, or cutting a child; (2) striking a child with a closed fist; The age, size, and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate. This list is illustrative of unreasonable actions and is not intended to be exclusive.

RCW 9A.16.100. The jury was properly instructed that Redmond’s actions were lawful if they were objectively reasonable and moderate under the circumstances.¹

Viewing the evidence and all inferences therefrom in the light most favorable to the State, we find no merit in Redmond’s contention. There was abundant evidence that Redmond assaulted his daughter. A rational trier of fact could have found that Redmond’s use of force against R.M. was unreasonable. The jury was entitled to believe the State’s evidence and not believe Redmond’s testimony. There was sufficient evidence introduced, including both Jones’ and Barron’s testimony that Redmond had kicked R.M., to sustain Redmond’s conviction.

¹ Asserting that actions were reasonable parental discipline is not an affirmative defense requiring Redmond to prove that his actions were reasonable. Rather, the State had the burden of proving that Redmond’s actions were unlawful. See State v. Prado, 144 Wn. App. 227, 247, 181 P.3d 901 (2008) (finding no error in an instruction because it properly “informed the jury of the State’s burden of proving [defendant]’s use of force ‘was not lawful’”); State v. Valentine, 75 Wn. App. 611, 618, 879 P.2d 313 (1994) (“[T]he State bore the burden of proving the force used was unreasonable beyond a reasonable doubt.”). Therefore, the State had the burden of proving that Redmond’s actions did not constitute objectively reasonable, moderate parental discipline under the circumstances.

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Affirmed.

Dwyer, A.C.J.

We concur:

Jain, J.

Grosse, J.