IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. George Aaron Powell, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060465-CA F I L E D (November 16, 2007) 2007 UT App 372

Fifth District, St. George Department, 051500399
The Honorable Eric A. Ludlow

Attorneys: Margaret P. Lindsay and Julia Thomas, Orem, for Appellant
Brock R. Belnap and Ivan W. LePendu, St. George, for Appellee

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Before Judges Billings, McHugh, and Thorne.

THORNE, Judge:

George Aaron Powell was convicted of assault against a peace officer, see Utah Code Ann. §§ 76-5-102, -102.4 (2003), interference with an arresting officer, see id. § 76-8-305 (2003), and no evidence of owner's or operator's security, see id. § 41-12a-303.2 (2005). Powell appeals, claiming that the State did not provide sufficient evidence of his mental state to sustain a conviction for assault against a peace officer. We affirm.

Powell's assault conviction arose from an incident in March 2005 involving Powell and Officer Clayton Lucas of the St. George City Police Department. The incident occurred when Lucas stopped Powell's van for a perceived registration violation. While Lucas was attempting to obtain Powell's proof of insurance, Powell opened his door and attempted to exit the van. Lucas pushed his hand against the van door and commanded Powell to stay in the van. Powell then forced his way out of the van, knocking Lucas off balance and causing him to step to avoid falling. Powell approached Lucas with his fists clenched, his teeth gritted, and

breathing hard. After warning Powell to return to his vehicle a number of times, Lucas backed away from Powell and drew, but did not fire, his taser. Powell never verbally threatened Lucas or used actual force, but continued to exhibit the same aggressive demeanor when other officers arrived and took Powell into custody.

Powell argues that the State failed to prove the mens rea necessary to establish an assault against Lucas, claiming that the jury could convict him only if it found that he intentionally attempted, with unlawful force or violence, to do bodily injury to Lucas; intentionally threatened, accompanied by a show of immediate force or violence, to do bodily injury to Lucas; or intentionally committed an act, with unlawful force or violence, that caused bodily injury to Lucas or created a substantial risk of bodily injury to Lucas.[1] Powell claims that the State failed to show any specific intent to assault. He argues that without more direct evidence of either a verbal threat or an attempt to strike Lucas, the State merely proved that he intended to get out of his van. Therefore, Powell continues, a reasonable jury could not have found the required culpable mental state and the verdict cannot be sustained. We disagree.

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[1]The crime of assault against a peace officer does not require a culpable mental state of intentional action by a defendant, but rather is established by proof of reckless action against a known peace officer in the performance of his or her duties. See Utah Code Ann. §§ 76-2-102 (2003) (stating that "when the definition of the offense does not specify a culpable mental state . . . intent, knowledge, or recklessness shall suffice to establish criminal responsibility"), 76-5-102 (defining assault without expressly specifying a culpable mental state), 76-5-102.4 (making it a class A misdemeanor to commit assault on a peace officer "with knowledge that he is a peace officer, and when the peace officer is acting within the scope of his authority"). Here, the jury was erroneously instructed that it had to find that Powell acted intentionally in order to convict. This error was harmless, however, as the jury's finding of intentional action necessarily established that Powell acted with the lower culpable mental state of recklessness. See State v. Haltom, 2005 UT App 348, ¶ 21 n.5, 121 P.3d 42, aff'd, 2007 UT 22, 156 P.3d 792, cert. denied, 76 U.S.L.W. 3156 (U.S. Oct. 1, 2007); see also Utah Code Ann. § 76-2-104 (2003) (providing that the culpable mental states of knowledge and recklessness are both established by a showing of intentional action).

A jury verdict will fail judicial scrutiny only if "the evidence presented at trial is so insufficient that reasonable minds could not have reached the verdict." State v. Clowell, 2000 UT 8, ¶ 42, 994 P.2d 177. Furthermore, the evidence presented to the jury must be reviewed "in a light most favorable to the verdict." Id. Powell argues that the State provided no direct evidence of his intent, but direct evidence is not required. Rather, we can look "to the circumstantial evidence and all reasonable inferences drawn therefrom" to support a jury verdict. State v. Martinez, 2002 UT App 126, ¶ 42, 47 P.3d 115. This is particularly true when the issue is a person's intent. See State v. James, 819 P.2d 781, 789 (Utah 1991) ("[U]nless the court is somehow able to open the mind of the defendant to examine his motivations, intent is of necessity proven by circumstantial evidence.").

Here, the State presented circumstantial evidence sufficient for a jury to infer that Powell intentionally assaulted Lucas. First, a jury could reasonably infer that when Powell shoved open his door hard enough to knock Lucas off balance, despite Lucas's command to remain in the vehicle, Powell intentionally took action with unlawful force that created a substantial risk of bodily harm to Lucas. See Utah Code Ann. § 76-8-305 (criminalizing the failure to comply with the lawful order of a detaining officer). Regardless of whether Lucas sustained any actual harm, the jury need only have decided that Powell's intentional action created a substantial risk of injury. As the State argues, Lucas could easily have been struck by the door, knocked to the ground, or pushed into oncoming traffic, all of which would create a substantial risk of injury.

Second, the jury could reasonably have inferred that Powell intentionally threatened Lucas with an immediate show of force by approaching him with fists clenched, teeth gritted, and breathing hard. This inference is bolstered by Lucas's reaction to Powell's aggressive behavior. Powell's actions caused Officer Lucas to back away from Powell toward his own vehicle, warn Powell to get back in his vehicle "for your safety and mine," draw his taser, and radio for back up. Even without a direct verbal threat, and assuming that Powell had no intention of actually harming Lucas, the circumstantial evidence of Powell's unusually aggressive behavior could lead a jury to reasonably conclude that Powell intentionally threatened Lucas with a show of immediate force.

The State provided circumstantial evidence sufficient for a reasonable jury to infer Powell's intent to assault Lucas.

Accordingly, we sustain the jury verdict and affirm Powell's conviction.

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William A. Thorne Jr., Judge

WE CONCUR:

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Judith M. Billings, Judge

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Carolyn B. McHugh, Judge