

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

STATE OF WASHINGTON,)	
)	No. 63469-1-I
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
)	
ADRIAN T. C. STANSIFER, JR.,)	
)	
Appellant.)	FILED: <u>July 26, 2010</u>

Schindler, J. — A jury convicted Adrian Stansifer of burglary in the first degree in violation of RCW 9A.52.020(1). Stansifer claims insufficient evidence supports the conviction. Because a rational trier of fact could have found beyond a reasonable doubt that Stansifer unlawfully entered the victim’s residence and assaulted him, we affirm.

FACTS

Adam Cage and Emily Stansifer were romantically involved from July 2004 until the beginning of July 2008. While they were together, Cage met Emily’s brother, Adrian Stansifer. Cage and Emily lived together at Cage’s house in Fall City for the three and a half years they were together. Adrian went to visit Cage and Emily at

Cage's house a number of times. Adrian had a unique hairstyle, "very long, black, spiky hair, very distinct kind of Japanese style." According to Cage, "nobody had hair like Adrian at the time." When Cage first met Adrian, Adrian told him, "[y]ou mess with my older sister and you'll be seeing me. . . . If you hurt my sister I will hurt you."

Cage and Emily ended their relationship and, in early July, Cage began dating Haley Lucotch. Lucotch had never met Adrian Stansifer.

At around 2:00 a.m. on July 4, 2008, Cage returned home with Lucotch. Lucotch put a load of laundry in the washer. She smoked a cigarette on the porch, leaving the sliding door open when she came back inside. Cage and Lucotch took a shower for about 30 minutes. Lucotch finished showering first. She left the bathroom to transfer the clothes from the washer to the dryer. While Cage was shaving, he looked in the mirror, "saw something, and thought it was Haley coming back around the corner into the bathroom."

Two men charged toward Cage and pushed him into the shower. Cage fell onto his back. The two men attacked Cage. Both of the men wore shirts wrapped around their heads to obscure their faces.

Cage believed that one of the attackers was Adrian Stansifer. Cage recognized Stansifer's distinct hair protruding from under the shirt. Cage also said the man had the same build as Stansifer. During the attack, Cage said, "[f]ucking knock it off, Adrian. It's not what you think it is."

Hearing the commotion, Lucotch entered the bathroom. Lucotch screamed at

the two men and pulled one of them off Cage. While pulling the man off Cage, Lucotch partially removed the shirt covering the man's face and Cage recognized Stansifer. Lucotch also saw the upper half of the man's face as he retreated from the bathroom, and Lucotch and the man stared at each other for a few seconds. Then Cage saw the men leave the house through the sliding glass door.

Lucotch called 911. When Deputy Brian Hill arrived, he took statements from Cage and Lucotch. Cage told Deputy Hill that Stansifer was one of the men who attacked him.

Detective Scott Allen interviewed Lucotch several days later. Detective Allen showed Lucotch a photomontage of six men and asked whether she could identify the man who she had seen in Cage's home on July 4. Lucotch immediately pointed to Stansifer's photograph and identified him as the man who assaulted Cage. The police arrested Stansifer.

The State charged Stansifer with burglary in the first degree in violation of RCW 9A.52.020(1).

At trial, Cage, Lucotch, Deputy Hill, and Detective Allen testified on behalf of the State. Cage and Lucotch both identified Stansifer as the man who attacked Cage on July 4. Cage testified that his level of certainty about his identification of Stansifer was "[a] hundred percent." Lucotch also testified that she was "100 percent sure" about her identification of Stansifer. Cage and Lucotch both testified that they were uncertain about the identity of the other man who attacked Cage. Stansifer said he

was home asleep during the incident.

A jury convicted Stansifer as charged of burglary in the first degree. The court imposed a sentence in the standard range.

ANALYSIS

On appeal, Stansifer asserts that the State did not present sufficient evidence to prove beyond a reasonable doubt that he was the individual who assaulted Cage at his home on July 4.

In reviewing a challenge to the sufficiency of the evidence, all evidence presented by the State is presumed to be true, and is considered in the light most favorable to the State. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence is given as much weight as direct evidence. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). All reasonable inferences are presumed true, and are drawn in favor of the State and against the defendant. Salinas, 119 Wn.2d at 201. Witness credibility is determined by the trier of fact, and cannot be considered on appeal. State v. Walton, 64 Wn. App. 410, 415-416, 824 P.2d 533 (1992). The identity of the perpetrator is generally a question of fact for the jury. State v. Hill, 83 Wn.2d 558, 560, 520 P.2d 618 (1974). Evidence is sufficient when any rational trier of fact could have found each essential element of the crime beyond a reasonable doubt. Salinas, 119 Wn.2d at 201.

To convict Stansifer of burglary in the first degree, the State had to prove beyond a reasonable doubt that he entered Cage's house unlawfully, that he did so

with intent to commit a crime, and that he assaulted Cage inside the house. RCW 9A.52.020(1)(a). “Unlawful entry” means that Stansifer was “not then licensed, invited, or otherwise privileged to so enter or remain.” RCW 9A.52.010.

Stansifer contends the evidence was insufficient to identify him as the man who entered the house and assaulted Cage. Relying on United States v. Musquiz, 445 F.2d 963, 965 (5th Cir. 1971) and United States v. Johnson, 427 F.2d 957, 961 (5th Cir. 1970), Stansifer argues his conviction should be reversed because it is based solely on an uncertain and uncorroborated in-court identification. But here, unlike in Musquiz and Johnson, the testimony of Cage and Lucotch identifying Stansifer as the attacker was neither uncertain nor uncorroborated.

Stansifer claims that Cage testified that he did not see his attacker’s face, but instead made his identification based on a “gut’ feeling.” Stansifer also claims Lucotch testified that she saw very little, was unable to identify Stansifer with any certainty, and could not have picked him out of a photo montage. Stansifer argues that Lucotch identified him because she saw a photograph of the Stansifer family prior to the photomontage.

However, the evidence Stansifer relies on to argue the alleged uncertainty of identification concerns the second attacker, whom Cage and Lucotch admitted they could not identify. For example, Stansifer claims that both Cage and Lucotch acknowledged “no identification or recognition of Stansifer at the time of the event.” This is simply inaccurate. As explained, Cage testified that he recognized Stansifer

by his hairstyle and build, and also recognized his face after the shirt was partially removed. Lucotch testified that she was able to see Stansifer's face and repeatedly denied seeing a photograph of Stansifer before identifying him in the photomontage. Both testified to 100 percent certainty that Stansifer was one of the two attackers.

We affirm.

Schiveller, J.

WE CONCUR:

Leach, A.C. J.

Becker, J.