

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JOHN FREDERICK WEIBLE,

Appellant.

No. 65609-1-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: September 12, 2011

Leach, A.C.J. — John Frederick Weible appeals his conviction for first degree assault with a firearm (domestic violence) under RCW 9A.36.011(1)(a). He challenges the sufficiency of the evidence presented to show he acted with the intent to cause great bodily harm to the victim, Elaine Berger. Additionally, in a statement of additional grounds, Weible claims he was mentally incompetent to stand trial and that his conviction violates his Fourteenth Amendment due process rights.

Because the prosecution presented sufficient evidence of intent to cause great bodily harm and the trial court properly found Weible competent to stand trial, we affirm.

Background

In 2007, John Weible and Elaine Berger began a romantic relationship, and Weible soon moved into Berger's home with Berger and five of her children. On June 29, 2009, after Berger decided to end the relationship, her son served

Weible with a 30-day notice to vacate and arranged the locks on the house so that Weible had access only to the garage and bedroom. Weible began to move his belongings from the house.

On July 8, while he was at the house packing his belongings, Weible shot Berger with a .38 caliber Smith & Wesson revolver. He fired all six rounds from the pistol. One bullet struck Berger's right shoulder, traveled through her chest, and entered her abdominal cavity. Rescue workers airlifted Berger to Harborview Medical Center, where she immediately was taken to the operating room. During surgery to repair internal injuries, doctors found and removed the bullet. Berger stayed at Harborview for 14 days, during which time she underwent three surgeries.

The State charged Weible with first degree assault with a firearm. The court also instructed the jury on the lesser included offense of second degree assault. The jury convicted Weible of first degree assault.

Weible appeals.

Analysis

Sufficiency of the Evidence

"Sufficiency of the evidence is a question of constitutional magnitude which a defendant may raise for the first time on appeal."¹ "In reviewing the sufficiency of the evidence, we examine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,

¹ State v. Atterton, 81 Wn. App. 470, 471-72, 915 P.2d 535 (1996).

viewing the evidence in the light most favorable to the State.”² By claiming insufficiency, the defendant admits the truth of the State’s evidence and all reasonable inferences drawn in favor of the State.³ We do not review a jury’s credibility determinations.⁴

To convict Weible of first degree assault with a firearm, the prosecution needed to prove: (1) that Weible assaulted Elaine Berger, (2) that the assault was committed with a firearm, (3) that the defendant acted with intent to inflict great bodily harm, and (4) that the act occurred in the state of Washington. Specific intent to inflict great bodily harm can be inferred as a logical probability from all the facts and circumstances.⁵ The prosecution’s evidence included testimony that Weible asked, “What do you have to live for?” before firing six shots at Berger at close range and paused to aim at Berger before firing the last round. Weible testified in his own defense that he did not intend to shoot Berger and that he had no intent to cause her great bodily harm. However, viewing the evidence in the light most favorable to the State and drawing all reasonable inferences in favor of the State, a rational trier of fact could conclude that Weible assaulted Berger with the intent to inflict great bodily harm. Sufficient evidence supports his conviction for first degree assault.

Statement of Additional Grounds

² Atterton, 81 Wn. App. at 472.
³ State v. Pedro, 148 Wn. App 932, 951, 201 P.3d 398 (2009).
⁴ State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).
⁵ Pedro, 148 Wn. App. at 951; State v. Louthier, 22 Wn.2d 497, 502, 156 P.2d 672 (1945).

Weible argues that he was incompetent to stand trial and that the trial court did not find, on the record, that he had the capacity to understand the proceedings against him and assist in his defense. Both the United States Constitution and Washington law forbid trying a mentally incompetent criminal defendant.⁶ In Washington, a defendant is competent to stand trial if he understands the nature of the charges against him and is capable of assisting in his own defense.⁷ We review a trial judge's competency determination for an abuse of discretion.⁸

We find no basis for Weible's claim that the trial court failed to find that he was competent to stand trial. On September 3, 2009, the trial court ordered a forensic psychological examination. Dr. Douglas Campbell, a staff psychologist at Western State Hospital, interviewed Weible four times between September 18 and October 22. Dr. Campbell submitted his evaluation on November 20, 2009, declaring, "[Weible] was able to demonstrate sufficient capacity to understand the nature of the legal proceedings against him." The court held a formal competency hearing on December 2, 2009, and based on the mental health report, found Weible competent to stand trial. The court did not abuse its discretion in finding Weible competent.

Conclusion

Because the State presented sufficient evidence to convict Weible of first

⁶ U.S. Const. amend. XIV, § 1; RCW 10.77.050.

⁷ State v. Lewis, 141 Wn. App. 367, 381, 166 P.3d 786 (2007).

⁸ State v. Crenshaw, 27 Wn. App. 326, 330, 617 P.2d 1041 (1980).

degree assault with a firearm and the trial court did not abuse its discretion by finding Weible competent to stand trial, we affirm.

Leach, a.c.j.

WE CONCUR:

Jau, J.

Cox, J.