

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 65915-4-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
DAVID JOHN NORDVALL ,)	
aka JOHN DAVID NORDVALL,)	
)	UNPUBLISHED OPINION
Appellant.)	
)	FILED: March 12, 2012
_____)	

Becker, J. — Officers who were trying to arrest appellant David Nordvall could not get him to come out of his house. Outside the bedroom where Nordvall was barricaded, officers heard a shot and one of them felt something hit his bicep protector. When the officers entered the bedroom, Nordvall was the only person there, and there was a pellet gun on the floor. This was sufficient evidence of an assault with the specific intent to harm. We affirm the jury's verdict finding Nordvall guilty of third degree assault.

FACTS

According to testimony at trial from law enforcement officers, King County

Sheriff deputies went to Nordvall's home on September 8, 2009, after they were notified there was probable cause to arrest him for threats. The deputies knocked on the front door and announced who they were. Nordvall peeked out a window near the door. The officers asked Nordvall to step outside so they could talk to him. Nordvall told the officers they were trespassing and asked them to leave. The officers left and obtained a warrant. A special weapons and tactics (SWAT) team was dispatched and arrived at Nordvall's residence at about 10:15 p.m. They received information that Nordvall had been trying to get a gun from a neighbor and that he possessed edged weapons in his home.

The SWAT team set up floodlights and secured the street. Using a public address system in an armored vehicle, a negotiator attempted to talk to Nordvall. Nordvall did not respond. The officers proceeded to break windows in the house. They threw a phone into the house. Nordvall did not pick it up. The officers shot tear gas and pepper spray into the home. Nordvall retreated to his bedroom.

SWAT members entered and secured the house. In the room adjoining Nordvall's bedroom, Deputy Bryan Pacey made a hole in the wall so that they could see where Nordvall was, what he was doing, and what kind of barricade he had constructed. As Deputy Pacey was doing this, the officers heard a pop and one officer saw a spray of sheetrock. Deputy Pacey felt something hit him in the right shoulder, which was covered by a bicep protector. The officers backed out of the room. Near the hole made by Deputy Pacey, they could see a smaller

hole the same diameter as a pistol round.

Officers eventually entered Nordvall's bedroom at about 6:00 a.m. They found Nordvall in the closet under a blanket. They secured him after a brief struggle. Officers found a pellet rifle in the room along with pellets on the floor. They did not recover the pellet they thought was fired.

Nordvall testified that he did not make the threats that he was accused of. He said he did not hear the SWAT team arrive and woke up to the sound of breaking glass. He suspected it was an unfriendly neighbor, so he barricaded himself in his bedroom. He claimed he did not learn it was the police until they were in his room. He denied shooting or pointing a pellet gun at police officers.

Nordvall contends there was insufficient evidence to convict him of third degree assault.

A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree, assaults a law enforcement officer who was performing his or her official duties at the time of the assault. RCW 9A.36.031(g). An essential element of assault is that the actor had the specific intent to cause harm or to create an apprehension of harm. State v. Byrd, 125 Wn.2d 707, 713, 887 P.2d 396 (1995). The jury was so instructed through an instruction defining assault. Nordvall argues there is insufficient evidence of the element of specific intent.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of

fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. Salinas, 119 Wn.2d at 201. 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. Although Nordvall testified that he did not fire at the officers and was not trying to harm them, the jury was not required to believe his testimony. Credibility determinations are for the trier of fact and cannot be reviewed on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

No one saw Nordvall discharge a weapon at the officers. The officers did not find a discharged pellet. There was no evidence that the pellet gun was operable or capable of penetrating through sheetrock. Nordvall argues that without such evidence, the State failed to prove he fired the gun *at the officers* with the specific intent to harm them or create apprehension of harm.

In support of this argument, Nordvall cites three cases in which this court rejected challenges to the sufficiency of the evidence: State v. Oakley, 158 Wn. App. 544, 242 P.3d 886 (2010), review denied, 171 Wn.2d 1021 (2011); State v. Mann, 157 Wn. App. 428, 237 P.3d 966 (2010); and State v. Pedro, 148 Wn. App. 932, 201 P.3d 398 (2009), review denied, 169 Wn.2d 1007 (2010).

Nordvall points out that in these cases, at least one witness saw the defendant

fire or attempt to fire a gun. These cases are not helpful, however, because none of them hold that proving a charge of assault with a gun depends on presenting an eyewitness who saw the defendant holding the gun.

Circumstantial evidence may be sufficient.

When viewed in the light most favorable to the State, the evidence was sufficient to prove Nordvall fired the gun at the officers with the intent to harm them or create apprehension of harm. Nordvall refused to cooperate with officers attempting to secure his arrest. Nordvall was the only person in the room with the pellet gun. The gun and pellets were found in the room with Nordvall. As Deputy Pacey was making a hole in the wall, the officers heard a popping sound. Pacey felt something hit his arm. Officers saw a small hole near the hole Deputy Pacey had been making. Pacey testified the hole was consistent with a hole left by a projectile fired from a pellet gun. Deputy Scott Click testified he was familiar with pellet rifles and that a fired projectile can penetrate skin and muscle tissue. From this circumstantial evidence, the jury could rationally infer that Nordvall purposefully fired at police officers and intended to harm them or create apprehension of harm.

Affirmed.

Becker, J.

WE CONCUR:

Dupre, C. S.

65915-4-1/6

Seach, J.