

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,) No. 66018-7-1
)
 v.) DIVISION ONE
)
 SHIRLEY ANN LOVERN,) UNPUBLISHED OPINION
)
 Appellant.) FILED: March 5, 2012

Grosse, J. — Intent is an implied element of third degree assault and may be inferred from conduct. Here, the evidence is sufficient to support the jury’s finding that the defendant had the requisite intent to assault both the paramedic in the ambulance and the nurse at the hospital.¹ Accordingly, we affirm but remand to correct a scrivener’s error.

FACTS

Paramedics responding to a 911 call discovered Shirley Lovern unresponsive and lying on the ramp to her house. With police assistance, Richard Cannon, an emergency medical technician (EMT), and Debbie Crager, a paramedic, carried Lovern to the ambulance. In the ambulance, Lovern objected to an intravenous (IV) drip but after Crager explained that this was protocol because she was found unresponsive, she allowed Crager to insert the IV. During transport, Lovern became belligerent and said she did not want an IV. While still in the ambulance, Lovern called 911 asking for help.

¹ We note that both the information and the judgment and sentence incorrectly cite RCW 9A.36.031(1)(h). The correct section is (1)(i). Because the information and the court’s instructions (Nos. 5, 6, and 7) set forth the correct elements for each crime, this is nothing more than a scrivener’s error that should be corrected on remand.

Lovern then started poking Crager in the stomach and calling her names. At one point Lovern unbuckled the seat belts on the gurney and tried to leave the ambulance. Observing this, Cannon called police and pulled the ambulance to the side of the road. The police arrived and Lovern was restrained with soft restraints and the ambulance again set off for the hospital. During this portion of the transport, Lovern managed to pull out the IV and blood spurted forth. Crager grabbed Lovern's arm to stem the flow of blood. Lovern scratched Crager's wrists and spit at her while Crager was attempting to stop the bleeding.

On arrival at the hospital, Lovern needed to be restrained to move her into the hospital. Patricia Ulloa was one of the nurses who attended Lovern during her brief stay. Lovern needed to be cleaned up, but resisted Ulloa's efforts. Ulloa requested help from another nurse, Jacqueline Haynes. After they managed to clean Lovern, Ulloa walked around the bed adjusting the restraints so Lovern would be more comfortable. As she did this, Lovern reached out her leg and kicked Ulloa in the chest. Ulloa experienced a sharp pain that lasted from five to ten minutes. Ulloa testified that she knew that Lovern intentionally kicked her because as soon as she had walked to that part of the bed, she lifted up her leg and "went wham." Lovern immediately apologized and then spat at the nurses.

Lovern testified that she had no memory of the events. A jury convicted Lovern of two counts of third degree assault. Lovern appeals.

ANALYSIS

Lovern contends that there is insufficient evidence of intent to support her

convictions. Evidence is sufficient to support a conviction if, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.² All reasonable inferences are drawn in favor of the State and most strongly against the defendant.³ “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.”⁴

Here, the State was required to prove that Lovern “assault[ed] a nurse . . . or health care provider who was performing his or her nursing or health care duties at the time of the assault.” RCW 9A.36.031(1)(i). A paramedic is a health care provider.⁵ Although RCW 9A.36.031 does not have an express intent element, the common law definition of assault requires that the State prove an intentional act constituting an assault.⁶ The term “assault” is not defined by statute, and Washington looks to the common law for its definition.⁷ In order to commit an assault, a person must have the specific intent to do so.⁸ Intent is an implied element of third degree assault.⁹ Specific criminal intent may be inferred from the conduct of the accused where it is plainly indicated as a matter of logical probability.¹⁰ Drawing inferences from the evidence in the light most favorable to the State, the nurse testified that the manner in which she was kicked clearly indicated intent. The fact that Lovern later apologized

² State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

³ Salinas, 119 Wn.2d at 201.

⁴ Salinas, 119 Wn.2d at 201.

⁵ RCW 18.71.002; RCW 18.71.200.

⁶ State v. Brown, 140 Wn.2d 456, 470, 998 P.2d 321 (2000) (“To obtain a conviction for assault under [RCW 9A.36.031(1)(g)], the State must prove that a defendant intended to commit and did commit an assault against another person.”).

⁷ State v. Byrd, 125 Wn.2d 707, 712, 887 P.2d 396 (1995).

⁸ Byrd, 125 Wn.2d at 713.

⁹ State v. Craven, 67 Wn. App. 921, 926, 841 P.2d 774 (1992).

¹⁰ State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

does not obviate the intent to perform the act. The evidence was also buttressed by additional evidence which clearly portrayed Lovern as both verbally and physically belligerent. Further, the other nurse witnessed Lovern kicking Ullola. Ullola reported the assault immediately afterwards. Approximately one hour later, the hospital released Lovern who was then arrested for assault.

Lovern testified that she had no memory of the incident in the ambulance or in the hospital. She testified that she had been drinking. While Lovern's counsel argued that the conduct was accidental by reason of Lovern's intoxication, the jury was not compelled to accept this reasoning. A reasonable trier of fact could logically find intent beyond a reasonable doubt from the evidence presented.

Lovern next argues that article I, section 7 of the Washington Constitution guarantees her the right to refuse medical aid.¹¹ Lovern contends that she told Crager she did not want an IV. Thus, she argues, the struggle with Crager when Lovern tried to remove the IV was nothing more than an assertion of her right to refuse medical aid. However, there was testimony from both the paramedic and the EMT that once the protocol was explained to Lovern, she agreed to the insertion of the IV. Subsequently, Lovern became belligerent and wanted the IV removed and, in fact, pulled it out herself. It was during this struggle, while Crager was trying to stem the flow of blood, that Lovern assaulted Crager. These are credibility issues. Credibility determinations are for the trier of fact and are not subject to review.¹²

Lovern argued and the jury was instructed that voluntary intoxication is a

¹¹ Matter of Welfare of Colyer, 99 Wn.2d 114, 120-22, 660 P.2d 738 (1983).

¹² State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

defense that could diminish Lovern's capacity to form the requisite intent. Issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence are within the purview of the jury.¹³ Sufficient evidence supports the jury verdicts finding Lovern guilty of two counts of assault. We affirm the convictions but remand to correct the scrivener's error to cite to the correct statutory subsection.

Grosse, J.

WE CONCUR:

Spencer, J.

Cox, J.

¹³ State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).