IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 66538-3-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
ROY STETHEN PORTER,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: July 16, 2012

Spearman, A.C.J. — A jury convicted Roy Porter of first degree assault and second degree unlawful possession after Porter fired a gun at his mother's fiancé. On appeal, Porter argues the evidence was insufficient for the jury to find that he acted with intent to commit great bodily harm. Viewed in a light most favorable to the State, the evidence admitted at trial shows otherwise, and as such we reject Porter's argument. We also reject the arguments raised by Porter in his statement of additional grounds. Affirmed.

FACTS

Darryl Peterson is engaged to and resides with Roy Porter's mother. Peterson and Porter have a history of conflict, and Peterson eventually asked Porter to never come to the couple's house again. On February 10, 2010, however, Porter came to the couple's home. When Peterson realized Porter was in the house, he asked him to leave. Porter was "[a]ngry." Verbatim Report Proceeding, 11/18/2010 (VRP) at 15.

Peterson headed to a telephone in his bedroom to call the police. Porter was standing in a doorway less than ten feet away from Peterson. Peterson testified he then saw Porter "coming at me." VRP at 24. Peterson saw a gun in Porter's hand, and when Porter was three or four feet away from Peterson, he fired the gun. Peterson had ducked down and was not hit. When Peterson got up, he saw that the bullet went through his closet door. He believes if he had remained standing he would have been hit by the bullet. Porter ran out the front door.

A jury convicted Porter of first degree assault with a firearm enhancement and second degree unlawful possession of a firearm. Porter appeals.

DISCUSSION

Porter argues the evidence was insufficient to support his assault conviction. When reviewing a claim of insufficient evidence, we view the evidence in the light most favorable to the State in order to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Brockob, 159 Wn.2d 311, 336, 150 P.3d 59 (2006). We draw all reasonable inferences in the State's favor and interpret them most strongly against the defendant. State v. Hosier, 157 Wn.2d 1, 8, 133 P.3d 936 (2006).

Porter contends the evidence shows only that he recklessly fired his gun near Peterson, and not that he had the requisite intent to cause great bodily harm as is required by the first degree assault statute, RCW 9A.36.011(1)(a). We disagree. The term "great bodily harm" is defined as follows:

"Great bodily harm" means bodily injury which creates a probability

> of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ;. . .

RCW 9A.04.110(4)(c). Here, Peterson testified that Porter was angry; that Porter came at him with a gun; that Porter fired the gun when just a few feet away from him; and that had he not ducked, the bullet would have hit him. Viewing this testimony in a light most favorable to the State, a rational trier of fact could conclude that Porter acted with intent to cause great bodily harm to Peterson.

In his pro se statement of additional grounds, Porter argues that officers failed to examine or collect what he describes as potentially exculpatory evidence, i.e., the bullet fired into the closet and the bullet hole. Porter cites several federal and out-of-state cases that cover a broad range of issues relating to exculpatory evidence, but those cases involve facts not present here, such as the intentional destruction of evidence by the State, or a limited duty to preserve urine samples, breathalyzer ampoules, semen samples, or other evidence crucial to a particular prosecution.

The only Washington case cited by Porter, State v. Judge, 100 Wn.2d 706, 675 P.2d 219 (1984), is likewise of no help to him. In Judge, our Supreme Court discussed how, in the case of inadvertent loss of evidence, the defendant has the burden of demonstrating prejudice to his defense:

> In State v. Vaster, 99 Wn.2d 44, 659 P.2d 528 (1983), the court considered the problem of inadvertent or good faith loss or destruction of evidence by police or the prosecution. We ruled that the defendant has the burden of showing there is a reasonable possibility the missing evidence would have affected his ability to present a defense. Vaster, 99 Wn.2d at 52. If such a reasonable possibility is found, the court must balance it against the ability of the prosecution to have preserved the evidence (considering the procedures established for preserving evidence), the nature of the missing evidence, and the circumstances surrounding its loss.

Judge, 100 Wn.2d at 717. Thus, to the extent Porter argues the failure of the police to retrieve the bullet or forensically examine the bullet hole amounted to a loss of exculpatory evidence, he must demonstrate "there is a reasonable possibility the missing evidence would have affected his ability to present a defense." Id. (citing Vaster, 99 Wn.2d at 52).

Porter has made no such showing here. He simply asserts that witness statements are insufficient grounds for a conviction when alleged exculpatory scientific evidence may exist, and that a ballistics analysis is crucial to this case. But Porter cites no case indicating direct testimony is to be given less weight than other types of evidence, and moreover, we defer to the trier of fact on issues that involve conflicting testimony, witness credibility, and the persuasiveness of the evidence. State v. Lubers, 81 Wn. App. 614, 619, 915 P.2d 1157 (1996) (citing State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) and State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992)). We therefore reject Porter's argument on this issue.

Affirmed.

Specimen, A.C.J.

WE CONCUR: