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

STATE OF WASHINGTON,	)	No. 67568-1-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
HEIDI JO COREY,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: January 17, 2012
	)	

Ellington, J. — Heidi Jo Corey contests her convictions for third degree assault and harassment based on insufficient evidence and abuse of discretion. We affirm.

BACKGROUND

On October 13, 2009, Corey appeared in the Milton District Court for a hearing on another matter. The prosecutor for Milton, Krista White-Swain, was there, but because of a conflict with Corey, another prosecutor, Mr. Bejarano, was present to represent Milton in the matter.

Milton Police Officer William Downey was working basic patrol and courtroom security that day, when White-Swain told him she thought Corey smelled like marijuana. She asked Downey to investigate, and he reported back that he smelled marijuana when he walked past Corey, her lawyer, and another man standing

outside the courtroom.

Corey was called for hearing. Bejarano notified Judge Sandra Allen that he believed Corey had been using marijuana. Judge Allen ordered the case continued.

When Corey left the courthouse, Downey approached her and said he had received information she may recently have used marijuana. She denied having any marijuana on her or smoking any that day. When Downey said he believed she had in fact smoked marijuana that day, Corey became belligerent. She went back into the courtroom, interrupting another proceeding, and yelled at the judge and at Downey. She refused to obey the judge's orders to quiet down or leave the courtroom, and she physically resisted arrest, striking Downey in the head at least once. Ultimately, it took four officers to restrain her.

Officer Savage took her to a jail transport van to await medical attention. As White-Swain walked by, Corey angrily said something to the effect of "I'll get you."[1]

Corey was charged with third degree assault and harassment.

At trial, Downey testified Corey told him she was going to "kick [his] ass," and that she intentionally hit him in the face three of four times with a closed fist during their altercation in the courtroom.[2]

Court reporter Carol Fisher also witnessed the incident, and testified she had seen Corey move around the room, yelling at the judge and Downey and flailing her arms to avoid arrest. She said that during the struggle, she saw Corey strike

[1] Report of Proceedings (RP) (Mar. 25, 2010) at 235; RP (Mar. 29, 2010) at 303-04, 321.

[2] RP (Mar. 25, 2010) at 85.

in the head at least twice. Milton Police Chief Rhoads, one of the officers who helped restrain Corey, also testified he saw Corey intentionally hit Downey in the head.

White-Swain testified that Corey verbally threatened her from the jail van as she walked by, saying "I got you" or "I'm gonna get you, you prosecutor from Algona."[3] Officer Savage, who was with Corey at the time, confirmed Corey addressed White-Swain, yelling, "This is this little bitch's fault; I'm going to get you."[4]

At the close of the State's evidence, the defense moved to dismiss the harassment charge based on insufficient evidence. The court denied the motion. The jury convicted Corey of both third degree assault and harassment.

Prior to sentencing, the prosecutor informed the defense that Officer Downey had been under investigation by the Pierce County Prosecutor's Office for lying under oath in a child custody hearing and abusing his position by using the government database to look up a private person without cause. The defense brought a motion for a new trial based on new evidence and a discovery violation. The State conceded the discovery violation, but the court denied the motion.

DISCUSSION

Corey argues the trial court erred by denying her motion for a new trial because the State failed to turn over evidence that its primary witness, Officer

[3] RP (Mar. 25, 2010) at 235. White-Swain is not a prosecutor from Algona, but Corey knew her from her work as a defense attorney for the City of Pacific, which shares a court.

[4] RP (Mar. 29, 2010) at 303-04.

Downey, was under investigation for perjury in another matter.

A court's denial of a motion for a new trial will not be overturned absent a manifest abuse of discretion,[5] where the court's discretion was exercised on untenable grounds or for untenable reasons.[6] Criminal Rule 7.5(a) provides a court may grant a new trial based upon either prosecutorial misconduct or newly discovered evidence.[7]

Under Brady v. Maryland, "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."[8] We review a challenge to a conviction based on an alleged Brady violation de novo.[9]

The three components of a Brady violation are (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) the evidence must have resulted in prejudice to the accused.[10] Prejudice occurs if there is reasonable probability that, had the evidence been disclosed to the

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[5] State v. Barry, 25 Wn. App. 751, 757, 611 P.2d 1262 (1980).

[6] State v. Flinn, 154 Wn.2d 193, 198-99, 110 P.3d 748 (2005).

[7] CrR 7.5(a)(2), (3).

[8] 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

[9] United States v. Woodley, 9 F.3d 774, 777 (9th Cir. 1993).

[10] State v. Sublett, 156 Wn. App. 160, 200, 231 P.3d 231, review granted 170 Wn.2d 1016, 245 P.3d 775 (2010) (citing Strickler v. Breene, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999)).

defense, the result of the proceeding would have been different.[11]

Even assuming the first two components of a Brady violation are satisfied, Corey cannot show prejudice. First, Downey did not testify about the harassment charge, so there is no probability the result of the proceeding would have been different with respect to that charge. Second, even if she had been successful in impeaching Downey's testimony with evidence of his prior perjury and the jury had completely disregarded such testimony, there was other evidence to support the third degree assault charge.

In addition to Downey's testimony that Corey hit him in the face, two other witnesses, Fisher and Rhoads, also testified they saw Corey hit Downey at least once. Further, Judge Allen testified to Corey's aggressive behavior and noted she had taken a "fighting stance" against Downey.[12] Given this undisputed testimony, there is no reasonable probability the jury would have come to a different result had the evidence of Downey's prior perjury come to light in time for trial.

Corey next argues there was insufficient evidence to convict her of harassment. Evidence is insufficient to support a conviction if, when viewed in the light most favorable to the prosecution, it would not permit a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.[13]

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[11] Sublett, 156 Wn. App. at 200.

[12] RP (Mar. 25, 2010) at 146.

[13] State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Due process requires the State to prove all elements of a crime beyond a reasonable doubt. State v. Aver, 109 Wn.2d 303, 310, 745 P.2d 479 (1987).

Corey was convicted under RCW 9A.46.020(1), which says a person is guilty of harassment if:

> (a) Without lawful authority, the person knowingly threatens:
>
> (i) To cause bodily injury immediately or in the future to the person threatened or to any other person; . . . and
>
> (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

This statute must be read as prohibiting only a "true threat,"[14] which is a statement made in context or under such circumstances wherein a reasonable person would interpret the statement as a serious expression of intent to inflict bodily harm upon or to take the life of another.[15]

Here, there was testimony that Corey threatened White-Swain by saying, "This is all that little bitch's fault" and "I got you" or "I'm going to get you, you prosecutor from Algona."[16]

Corey's statement to White-Swain came right after White-Swain had witnessed Corey's aggressive behavior in the courtroom and shortly after she had initiated an investigation about whether Corey smoked marijuana before her scheduled hearing. Corey, who is five feet, eleven inches tall, and who played professional women's football, had physically challenged the police until four of them were able to control her. Further, White-Swain and Corey had a history, wherein White-Swain twice requested to be removed as defense attorney in a past matter.

Viewing this evidence in the light most favorable to the prosecution, a

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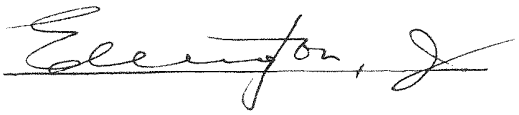
[14] State v. Kilburn, 151 Wn.2d 36, 43, 84 P.3d 1215 (2004).

[15] State v. Schaler, 169 Wn.2d 274, 283, 236 P.3d 858 (2010) (citing id.).

[16] RP (Mar. 25, 2010) at 235; RP (Mar. 29, 2010) at 303-04.

reasonable trier of fact could have found the elements of harassment beyond a reasonable doubt.

Affirmed.



WE CONCUR: