

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOE ANTHONY MATA,

Appellant.

No. 40546-6-II

UNPUBLISHED OPINION

Armstrong, J. — Joe Anthony Mata appeals his convictions for first degree malicious mischief and second degree assault. The State concedes that insufficient evidence supports the malicious mischief conviction. We accept the State’s concession, reverse the conviction of malicious mischief, and dismiss with prejudice.

Mata, pro se, argues: (1) his counsel ineffectively represented him, (2) the State failed to prove the assault charge, (3) the arresting officer used excess force, (4) the trial court violated his speedy trial rights and unduly delayed in recognizing an invalid no contact order, (5) the prosecutor acted vindictively, and (6) the trial court erred in admitting certain photographs into evidence. Finding no reversible error, we affirm his second degree assault conviction.

FACTS

On July 28, 2009, Pierce County Sheriff’s Deputy Robert Carpenter was randomly running license plates of passing vehicles when he observed Mata driving a stolen van. Deputy Carpenter pursued and signaled Mata to pull over, but Mata fled.

Carpenter attempted to stop the van using a Pursuit Interdiction Technique (PIT). While positioning himself for the PIT maneuver, Mata’s van swerved sharply towards Carpenter who

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was forced to turn into the oncoming traffic lane to avoid a likely collision. During his second PIT maneuver attempt, Carpenter's vehicle struck a concrete center barrier, damaging but not disabling the police car.

Eventually, Mata turned down a dead end street where Carpenter ordered him to stop. Mata then exited the van and fled on foot. Carpenter fired three rounds at him but missed.

The State charged Mata with first degree malicious mischief and second degree assault. The jury found Mata guilty of both.

ANALYSIS

I. Sufficiency of the Evidence

A. Standard of Review

In considering an allegation of insufficient evidence, we review the evidence in the light most favorable to the State and ask whether "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) (citing *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980)). A defendant who raises a sufficiency challenge "admits the truth of the State's evidence." *Salinas*, 119 Wn.2d at 201. In reviewing such a challenge, we draw all reasonable inferences from the evidence in favor of the State and most strongly against the defendant. *Salinas*, 119 Wn.2d at 201.

B. Malicious Mischief

A person commits first degree malicious mischief if he knowingly and maliciously interrupts or impairs public services by physically damaging or tampering with an emergency vehicle. RCW 9A.48.070(1)(b). The State acknowledges that it failed to prove that Mata

specifically intended to damage Deputy Carpenter's vehicle. Accordingly, we reverse Mata's malicious mischief conviction.

C. Assault

Mata contends the State failed to prove the second degree assault charge. A person commits second degree assault when he "[a]ssaults another with a deadly weapon." RCW 9A.36.021(1)(c). A "deadly weapon" includes a vehicle if, under circumstances, it is "readily capable of causing death or substantial bodily harm." RCW 9A.04.110(6). To prove second degree assault, the State must prove the defendant specifically intended to cause bodily harm or to create an apprehension of bodily harm. *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995).

Deputy Carpenter testified that during one of the attempted PIT maneuvers, Mata swerved sharply toward the patrol vehicle. To avoid a collision, Carpenter had to veer into the oncoming traffic lane. A jury could reasonably infer from this evidence that Mata was aware that the patrol vehicle was approaching him and that he swerved toward the vehicle with the intent to cause bodily harm or to create an apprehension of bodily harm in Deputy Carpenter. We are satisfied the State proved the assault charge beyond a reasonable doubt.

II. Assistance of Counsel

Mata contends that his counsel ineffectively represented him because he had only two weeks to prepare for trial, not enough time to prepare an adequate defense. To prevail on a claim of ineffective assistance of counsel, a defendant must show: (1) counsel's representation was deficient and (2) the deficiency prejudiced the defendant. *State v. Thomas*, 109 Wn.2d 222, 225, 743 P.2d 816 (1987). Mata cites no authority and points to no evidence that suggests his counsel

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representation was flawed. Mata's claim that counsel ineffectively represented him fails.

III. Excessive Force

Mata next argues that the arresting officer used excessive force during the arrest. But Mata fails to address how this affected the State's case or his defense. Thus, even if Mata's claim is true, we can provide no remedy.

IV. Speedy Trial Rights

Mata next contends that the trial court violated his constitutional right to a speedy trial. We disagree.

CrR 3.3(b) requires the State to bring a defendant to trial within 60 days. But the time included in any continuances by the court are excluded from the 60 days. CrR 3.3(e). A motion for a continuance must be made before the time for trial has expired, and the court must state on the record the reasons for any continuance. CrR 3.3(f)(2). When counsel moves for a continuance on behalf of a party, the motion "waives that party's objection to the requested delay." CrR 3.3(f)(2).

Mata's counsel, over Mata's objection, asked for and received continuances on September 15, October 8, and November 17, 2009. Ultimately, on January 27, 2010, the trial court granted a final continuance in connection with the resignation of Mata's attorney.

The trial court complied with the procedural requirements of CrR3.3(f) by stating the reasons for each continuance. And because Mata's counsel moved for the continuances at issue, Mata's objections have been waived. CrR 3.3(f)(2). Moreover, a trial court may grant defense counsel's request for more time to prepare for trial over a defendant's objection to ensure effective representation and a fair trial. *State v. Saunders*, 153 Wn. App. 209, 217, 220 P.3d

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1238 (2009) (citing *State v. Campbell*, 103 Wn.2d 1, 15, 691 P.2d 929 (1984)). We find no violation of Mata's speedy trial rights.

V. No Contact Order

Mata next contends that the State failed to recognize an invalid no contact order until the time of trial. But the State did concede that the no contact order was invalid and dismissed the charge associated with it. Accordingly, Mata suffered no harm and we can provide no remedy.

VI. Prosecutorial Vindictiveness

Mata also argues that the State acted vindictively by amending the information to include second degree assault after Mata refused to accept a plea bargain. "Prosecutorial vindictiveness occurs when 'the government acts against a defendant in response to the defendant's prior exercise of constitutional or statutory rights.'" *State v. Korum*, 157 Wn.2d 614, 627, 141 P.3d 13 (2006) (quoting *United States v. Meyer*, 810 F.2d 1242, 1245 (D.C. Cir. 1987)). A prosecutorial action is "vindictive" only if *designed* to penalize a defendant for invoking legally protected rights. *Korum*, 157 Wn.2d at 627. A defendant must establish actual vindictiveness or a presumption of vindictiveness. *Korum*, 157 Wn.2d at 627. The latter arises when "'all of the circumstances . . . taken together, support a realistic likelihood of vindictiveness.'" *Korum*, 157 Wn.2d at 627 (quoting *Meyer*, 810 F.2d at 1246).

A prosecutor's decision to amend the charges against a defendant after the withdrawal of a plea agreement does not, by itself, amount to prosecutorial vindictiveness. *Korum*, 157 Wn.2d at 631. Because Mata provides no further evidence of prosecutorial vindictiveness, his claim fails.

VII. Photographic Evidence

Mata asserts that the trial court erred in admitting certain photographs into evidence. A party can appeal a trial court's ruling admitting evidence only if the party has objected to the evidence at trial. *State v. Avendano-Lopez*, 79 Wn. App. 706, 710, 904 P.2d 324 (1995). Mata does not specify which photographs he believes were improperly admitted; nor does he show that he objected to their admission at trial. Thus, we are unable to review the claimed error. *State v. Perez-Cervantes*, 141 Wn.2d 468, 482, 6 P.3d 1160 (2000) (failure to object to the admission of evidence at trial precludes appellate review).

We reverse Mata's conviction for malicious mischief and dismiss with prejudice. We affirm his conviction for second degree assault.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Worswick, A.C.J.