

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JEROLD B. MONAHAN,

Appellant.

No. 41042-7-II

UNPUBLISHED OPINION

Armstrong, J. — Jerold Monahan appeals his convictions of third degree residential burglary and assault, arguing that the evidence was insufficient to support his convictions. We affirm.¹

FACTS

On March 22, 2010, Hoquiam police arrested Monahan following an altercation at the house of his next door neighbor, Lois Quorp.² Monahan had let out his two dogs, one of which went over to Lois's adjoining property and began urinating near her back door. Lois picked up a nearby paint stick, tapping the dog to direct it back to Monahan's property. Monahan saw this, was upset by it, and approached Lois. Monahan yelled at Lois to stop hitting his dog, and Lois yelled at Monahan to stay off her property.

The altercation escalated, and Monahan grabbed Lois by the arm. Lois's son Eric heard the commotion caused by the argument and came from the house into the backyard, where the

¹ A commissioner of this court initially considered Monahan's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

² We refer to Lois Quorp by her first name in order to distinguish her from her son, Eric Quorp, who witnessed the event and testified at trial. We intend no disrespect.

two were arguing. Eric asked Monahan to leave Lois's property. Eric started to usher his mother back into her house, but Monahan followed. They entered the back door to Lois's house, which opened into the kitchen. Monahan entered and pushed Lois into the kitchen wall. Lois swung at Monahan with the paint stick she still held in her hand. Monahan then grabbed the paint stick from Lois and hit her in the head with it, breaking it in two. Eric grasped Monahan's arm to prevent him from hitting Lois again. Eric then pushed Monahan outside of Lois's house, locked the door and called 911. Monahan went back to his house and he too called 911.

Police officers arrived to find Lois visibly shaken and injured. She had an abrasion and bruise on her head and bruises and scratches on her hand. Lois went to the police station the following morning with a bruise on her upper arm that had developed the evening following the incident. Lois also testified that she had shoulder pain for the next two months.

After talking to Lois and Monahan about the incident and recovering the two halves of the paint stick, one from Monahan and one from Lois, police arrested Monahan. Following his arrest, Monahan gave a written statement to police describing the altercation, which was admitted at trial. He wrote:

I followed her into her house, stepping inside the threshold of her back door, and grabbed her left arm.

Qurop [sic] tried to hit me with the stick and I took it away from her. After I took the stick from her I may have hit her with it, I do not remember, it is possible though that I did hit her.

Ex. 4. At trial, Monahan testified that he did not know what a "threshold" was, but admitted that it was possible that he went inside Lois's house. He testified that he could not recall whether he hit her with the paint stick or not.

The State charged Monahan with third degree residential burglary and assault. Monahan waived his right to a jury trial. The court found him guilty as charged. He appeals.

ANALYSIS

Monahan argues that the State's evidence was insufficient to prove that he had the intent to commit a crime against a person or property when he entered Lois's home, as required by RCW 9A.52.025(1). He also argues that the evidence was insufficient to prove that a paint stick is a "weapon or other instrument or thing likely to produce bodily harm," necessary to sustain a conviction of assault in the third degree under RCW 9A.36.031(d). Br. of Appellant at 6.

Evidence is sufficient if, when viewed in a light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "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. Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

To prove residential burglary, the State had to prove that Monahan entered or remained in a dwelling "with intent to commit a crime against a person or property therein." RCW 9A.52.025(1). Monahan argues that the evidence at trial was insufficient regarding his intent to commit a crime within Lois's house. Viewing the evidence in the light most favorable to the

State, Lois's and Eric's testimony that Monahan entered Lois's home without permission and, while inside, assaulted Lois with the paint stick, is sufficient evidence to support the court's finding that Monahan entered or remained unlawfully inside Lois's home with the intent to commit a crime therein. The trial court found that testimony to be more credible than Monahan's testimony that he did not hit Lois with the paint stick and that he did not recall whether he went inside Lois's house. We will not disturb the trier of fact's credibility determination. *Walton*, 64 Wn. App. at 415-16. The State presented sufficient evidence that Monahan committed residential burglary.

To prove assault in the third degree, the State had to prove that Monahan "[w]ith criminal negligence, cause[d] bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm." RCW 9A.36.031(d). An "instrument or thing likely to produce bodily harm" is one which is "likely to produce harm by its nature or by circumstances." *State v. Marohl*, 170 Wn.2d 691, 699, 246 P.3d 177 (2010).

Monahan argues that the paint stick with which Monahan struck Lois is not an "instrument or thing likely to produce bodily harm" because it was "thin and easily broken." Br. of Appellant at 6. Lois testified that, when Monahan hit her, the stick "busted" her head. Report of Proceedings (RP) at 16. The responding police officers testified that she had a bump and a cut on her head. Although a paint stick may not be "likely to produce harm by its nature," it was, "by circumstances," used in a way likely to produce harm and it did in fact cause harm to Lois. *Marohl*, 170 Wn.2d at 699. Moreover, the paint stick was admitted into evidence, and the trial court had an opportunity to examine it before coming to the conclusion that it was "a weapon or

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other instrument or thing likely to produce bodily harm” for purposes of RCW 9A.36.031(d). RP at 47; Ex. 11A-B. The State presented sufficient evidence that Monahan committed assault in the third degree.

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We affirm.

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 in accordance with RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Van Deren, J.

Penoyar, C.J.