

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

**No. 26661-3-III**

**Respondent,**

)

)

) **Division Three**

**v.**

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)

**ANDRE LEONARD HENDRIX,**

) **UNPUBLISHED OPINION**

)

**Appellant.**

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Kulik, A.C.J. — A jury convicted Andre Hendrix of one count of assault in violation of a no contact order. Mr. Hendrix appeals, alleging insufficiency of the evidence and prosecutorial misconduct. We conclude Mr. Hendrix’s assertions of error are without merit and affirm the conviction.

**FACTS**

On July 16, 2007, Andre Hendrix and his fiancé, Tazaira Pruitt, were running errands. Also present with them was their infant child and Ms. Pruitt’s father’s girl friend, Crystal Walden. Mr. Hendrix and Ms. Pruitt were together despite their knowledge that a no contact order prohibited Mr. Hendrix from contacting Ms. Pruitt.

When the group stopped to get gas, Ms. Walden went into the gas station to pay. While in the gas station, an elderly couple came in and stated that a couple in the parking lot was acting strangely and that someone should call the police. When Ms. Walden looked outside the store, she saw Mr. Hendrix and Ms. Pruitt following each other around and getting in and out of the vehicle, appearing to be “just playing around.” Report of Proceedings (RP) (Sept. 6, 2007) at 109.

When Ms. Walden returned to the car, the couple had been arguing about Mr. Hendrix seeing another woman. Ms. Pruitt had struck Mr. Hendrix twice, and lifted her arm up and stated to Ms. Walden that he bit her.

A third party had contacted law enforcement. Officers located and contacted Mr. Hendrix, who had left the scene, and placed him into custody. When officers contacted Ms. Pruitt, she initially denied being with Mr. Hendrix or that an altercation had occurred between them. However, when asked to show an officer where Mr. Hendrix bit her, Ms. Pruitt immediately displayed her arm without contesting that Mr. Hendrix had bitten her. She showed officers a red abrasion on her upper right arm that the officers testified could be consistent with a bite mark. Photographs of the abrasion were admitted at trial. An officer also observed that Ms. Pruitt appeared to be afraid of Mr. Hendrix. When asked to provide a written statement, Ms. Pruitt stated that Mr. Hendrix had bitten her.

Ms. Pruitt claimed at trial that Mr. Hendrix had never bitten her, but that her arm had grazed Mr. Hendrix's teeth when she hit him. Mr. Hendrix also testified that he never hit or bit Ms. Pruitt.

During closing argument, the prosecutor argued over defense counsel's objection that:

There is an avenue for these parties to take and it's not taking the law into their own hands. There is an avenue to go back before a judge —

.....  
[The Prosecutor]: There is an avenue for these parties to take and that is to go into the court and settle it through a court of law. There is a reason for it. It's to stop this from happening. It's to stop people from hurting each other and that's what happened in this case. The defendant assaulted Ms. Pruitt in violation of a no contact order, the no contact order that was in effect.

RP (Sept. 7, 2007) at 12-13.

The jury found Mr. Hendrix guilty of one count of assault in violation of a no contact order. The court denied Mr. Hendrix's motion for a new trial based on the prosecutor's closing argument. This appeal followed.

#### ANALYSIS

*Sufficiency of the Evidence.* Evidence is sufficient to support a conviction if, when viewed in the light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime proved beyond a reasonable doubt. *State v.*

*Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). On appeal, this court draws all reasonable inferences from the evidence in favor of the State and interprets them most strongly against the defendant. *Id.* “A claim of insufficiency admits the truth of the State’s evidence” and all reasonable inferences therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). This court will reverse a conviction for insufficient evidence only when no rational trier of fact could have found that the State proved all of the elements of the crime beyond a reasonable doubt. *State v. Smith*, 155 Wn.2d 496, 501, 120 P.3d 559 (2005). In evaluating the sufficiency of the evidence, circumstantial evidence is as reliable as direct evidence. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). Specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability. *Id.* (quoting *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)). We defer to the finder of fact on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

Assault in violation of a no contact order requires the State to prove the defendant (1) had knowledge of the order, (2) knowingly violated the order, and (3) assaulted the victim within the meaning of RCW 26.50.110(4), which did not amount to first or second degree assault. *State v. Leming*, 133 Wn. App. 875, 885, 138 P.3d 1095 (2006). Assault

is defined as: (1) an intentional, unlawful touching (actual battery); (2) an intentional attempt with unlawful force to inflict bodily injury upon another, tending but failing to accomplish it (attempted battery); and (3) intentionally putting another in apprehension of harm. *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009); *see State v. Smith*, 159 Wn.2d 778, 788, 154 P.3d 873 (2007); *State v. Davis*, 119 Wn.2d 657, 663-64, 835 P.2d 1039 (1992).

Here, Mr. Hendrix admitted he had knowledge of the no contact order and that he knowingly violated it. Ms. Walden testified that Ms. Pruitt stated at the time of the incident that Mr. Hendrix bit her. When asked to show an officer where Mr. Hendrix bit her, Ms. Pruitt immediately displayed her arm without contesting that Mr. Hendrix had bitten her. Ms. Pruitt also made a written statement asserting that Mr. Hendrix bit her. Officers testified that the abrasions on Ms. Pruitt's arm were consistent with a bite mark. The jury viewed photographs of the abrasion. A rational juror could have concluded from these facts that Mr. Hendrix intentionally bit Ms. Pruitt. Accordingly, we hold sufficient evidence supports Mr. Hendrix's conviction.

*Prosecutorial Misconduct.* Mr. Hendrix moved for a new trial on the basis that the prosecutor committed misconduct during closing arguments. To establish prosecutorial misconduct, the defendant must show the prosecuting attorney's conduct was both

improper and prejudicial. *State v. Fisher*, 165 Wn.2d 727, 747, 202 P.3d 937 (2009).

Once proved, prosecutorial misconduct is grounds for reversal where there is a substantial likelihood that the improper conduct affected the jury. *Id.* In closing arguments, the prosecuting attorney has “‘wide latitude in making arguments to the jury and prosecutors are allowed to draw reasonable inferences from the evidence.’” *Id.* (quoting *State v. Gregory*, 158 Wn.2d 759, 860, 147 P.3d 1201 (2006)). We review allegedly improper comments in the context of the entire argument, the issues in the case, the evidence addressed in the argument, and the jury instructions. *State v. Dhaliwal*, 150 Wn.2d 559, 578, 79 P.3d 432 (2003). “References to evidence outside of the record and bald appeals to passion and prejudice constitute misconduct.” *Fisher*, 165 Wn.2d at 747.

Here, the prosecutor had wide latitude to argue that Mr. Hendrix could have resolved the no contact order through legal means, as opposed to blatantly violating it. Furthermore, the prosecutor’s comments did not shift any burden to Mr. Hendrix but merely emphasized Mr. Hendrix’s own admission that he had violated the no contact order. Finally, the prosecutor’s comments were not an appeal to passion or prejudice. Again, they served only to state the obvious fact that no contact orders are designed to prevent the sort of incidents alleged in this case. Likewise, the trial court did not abuse its discretion by denying Mr. Hendrix’s motion for a new trial based on these grounds.

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*State v. Allen*, 159 Wn.2d 1, 10, 147 P.3d 581 (2006). Accordingly, this court concludes that the prosecutor's statements were not improper.

Mr. Hendrix failed to raise the issue of conflict of interest by the prosecutor at trial, and the record is devoid of any supporting facts. Because this issue depends upon facts outside this record, Mr. Hendrix must raise this issue in a personal restraint petition. *State v. Roy*, 126 Wn. App. 124, 130, 107 P.3d 750 (2005); *see also In re Pers. Restraint of Taylor*, 122 Wn. App. 880, 95 P.3d 790 (2004).

We affirm the conviction for one count of assault in violation of a no contact order.

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

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Kulik, A.C.J.

WE CONCUR:

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Brown, J.

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Korsmo, J.