

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 27445-4-III

Respondent,

Division Three

v.

JOSE GERARDO MEJIA RANGEL,

UNPUBLISHED OPINION

Appellant.

Schultheis, C.J. — Joseph Gerardo Mejia-Rangel appeals his convictions for two counts of fourth degree assault and one count of third degree assault. He challenges the sufficiency of the evidence to support the convictions. We affirm.

FACTS

The State charged Mr. Mejia-Rangel with second degree assault against Rosanna Wessels, third degree assault against Spokane Police Officer Kristopher Honaker, and fourth degree assault against Brittney Sticka.

At trial, Ms. Sticka testified that on the afternoon of March 5, 2008, she and Ms. Wessels had seen Mr. Mejia-Rangel in a car with another woman. Ms. Wessels was

upset because she had been dating Mr. Mejia-Rangel and periodically living with him. Ms. Wessels tried to chase down Mr. Mejia-Rangel in the car but was unable to catch him. Ms. Sticka and Ms. Wessels then went drinking for the rest of the day. Ms. Wessels spoke with Mr. Mejia-Rangel on the phone and accused him of cheating on her. She told him to return her key and remove his belongings from her apartment.

According to Mr. Mejia-Rangel, Ms. Wessels told him to move out of her apartment. He testified that he did that after he got off work at about 10 p.m., and had returned to his own place when she called again and asked him to return her key. Mr. Mejia-Rangel went to Ms. Wessels' apartment and waited outside. Eventually, he went inside to do some housework while he was waiting. Ms. Wessels came home with Ms. Sticka at about 4 a.m.

Ms. Wessels slapped Mr. Mejia-Rangel at least once. Mr. Mejia-Rangel shoved Ms. Wessels and she shoved him back. According to Ms. Sticka, Mr. Mejia-Rangel tried to hit Ms. Wessels with his open hand and Ms. Sticka moved Ms. Wessels out of the way, taking the hit intended for Ms. Wessels. Ms. Sticka was pushed onto the couch, with Ms. Wessels on top of her and Mr. Mejia-Rangel on top of Ms. Wessels. Ms. Sticka could not see anything, but she heard Ms. Wessels screaming, struggling, and gasping for breath. After Ms. Wessels got free, she ran next door to the neighbor's house. Ms. Sticka followed her and called police.

The State introduced photographs showing redness and broken blood vessels on Ms. Wessels' neck. Mr. Mejia-Rangel denied placing his hands on Ms. Wessels' neck. Ms. Sticka told police that Ms. Wessels' hair had been pulled and the police found clumps of hair.

Officer Honaker testified that after Mr. Mejia-Rangel was arrested and transported to jail, Mr. Mejia-Rangel refused to get out of the car. Both Officer Honaker and Officer Aaron Ames testified that when Officer Honaker attempted to extricate Mr. Mejia-Rangel, Mr. Mejia-Rangel kicked the officer in the thigh. Mr. Mejia-Rangel denied having intentionally kicked the officer.

The jury convicted Mr. Mejia-Rangel of two counts of fourth degree assault involving Ms. Wessels and Ms. Sticka but could not reach a verdict on the assault of the officer.

In a second trial, the State presented evidence that Officer Ames assisted Officer Honaker in pulling Mr. Mejia-Rangel from the car. As Mr. Mejia-Rangel continued to struggle, Officer Honaker put his arm around Mr. Mejia-Rangel's neck and applied pressure, a maneuver known as a "lateral vascular neck restraint." Report of Proceedings (RP) at 266. Mr. Mejia-Rangel began making choking sounds. A suspect can be choked if the maneuver is improperly executed, but Officer Honaker testified that he was not even applying pressure. After Mr. Mejia-Rangel was delivered to jail personnel, Mr.

Mejia-Rangel evidently suffered a seizure and was taken to the hospital. Mr. Mejia-Rangel was convicted of the third degree assault upon Officer Honaker.

DISCUSSION

“The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, 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). “A claim of insufficiency admits the truth of the State’s evidence.” *Id.* Further, we “draw all inferences from the evidence in favor of the State and against the defendant.” *State v. Smith*, 155 Wn.2d 496, 501, 120 P.3d 559 (2005). We defer to the fact finder “on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.” *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)).

The jury was relevantly instructed on fourth degree assault:

To convict the defendant of the crime of assault in the fourth degree, as a lesser charge to Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 6th of March, 2008, the defendant assaulted Rosanna Wessels; and
- (2) That the acts occurred in the State of Washington.

Clerk’s Papers (CP) at 75 (instruction 15).

The jury was further instructed as to the definition of assault:

An assault is an intentional touching or striking of another person

that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking is offensive, if the touching or striking would offend an ordinary person who is not unduly sensitive.

An assault is also an act done with intent to inflict bodily injury upon another, [in]tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.

An assault is also an act done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

CP at 70 (instruction 10).

a. Assault of Ms. Wessels

The jury heard evidence that Ms. Wessels was gasping for breath while Mr. Mejia-Rangel was on top of her and she had red marks and broken blood vessels on her neck. Moreover, Mr. Mejia-Rangel pulled Ms. Wessels' hair, clumps of hair were found in the apartment, and later she was holding her head in pain. Accepting the State's evidence as true and drawing all inferences in favor of the State, this evidence shows that Mr. Mejia-Rangel both choked Ms. Wessels' neck and pulled the hair from her head. Either of these acts constitutes assault.

Mr. Mejia-Rangel implies that the evidence shows that Ms. Wessels initiated the struggle and he was merely protecting himself. Ms. Sticka described Mr. Mejia-Rangel's action as "I guess more or less like he was defending himself and angry at the same time." RP at 79. Ms. Sticka also testified that when she heard Ms. Wessels gasping, Ms.

Wessels may have been having a panic attack instead of being choked. Ms. Sticka admitted, however, that Ms. Wessels' neck was red and "[i]t looked like she could have been choked." RP at 78. It was up to the jury to make a determination concerning the conflicting testimony, credibility of the witnesses, and persuasiveness of the evidence.

Mr. Mejia-Rangel argues that he was acting in self-defense, which the State failed to disprove. However, even if the jury believed that Mr. Mejia-Rangel was defending himself, no reasonable juror could find that the amount of force was reasonably necessary. *See State v. Walden*, 131 Wn.2d 469, 474, 932 P.2d 1237 (1997).

b. Assault of Ms. Sticka

The jury was provided evidence that Mr. Mejia-Rangel swung his arm to hit Ms. Wessels with his open hand and Ms. Sticka got in the way of that blow. Accepting the State's evidence as true and drawing all inferences in favor of the State, this evidence shows that Mr. Mejia-Rangel intended to hit Ms. Wessels. The jury was instructed that Mr. Mejia-Rangel's intent to strike Ms. Wessels transferred to Ms. Sticka, the unintended individual. The evidence is therefore sufficient to support the conviction.

c. Assault of Officer Honaker

The second jury was instructed on the elements required to convict Mr. Mejia-Rangel of third degree assault in instruction 7, which relevantly read:

To convict the Defendant of the crime of Assault in the Third Degree each of the following elements of the crime must be proved beyond a reasonable

doubt:

1. That on or about the 6th day of March 2008 the Defendant assaulted Kristopher Honaker;
2. That at the time of the assault Kristopher Honaker was a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties; and
3. That any of these acts occurred in the state of Washington.

RP at 335.

The second jury was also instructed as to the definition of assault:

Instruction No. 8 -- An Assault is an intentional touching or striking of another person that is harmful or offensive regardless of whether any physical injury is done to the person. A touching or striking is offensive if the touching or striking would offend an ordinary person who is not unduly sensitive.

RP at 336.

Mr. Mejia-Rangel challenges only the intent element. The second jury heard evidence from both Officer Ames and Officer Honaker that Mr. Mejia-Rangel kicked Officer Honaker, which knocked the officer off-balance and caused him to stumble backward. Officer Honaker testified that “[i]t looked like he moved it up towards his chest and cocked it and then he kicked me with it.” RP at 265. Officer Ames testified, “I observed him raise his left leg up. It was on the top and cock it, and then I observed him kick Officer Honaker in the right leg somewhere about where the knee or the upper right thigh.” RP at 288. Mr. Mejia-Rangel testified that he did not intend to kick the officer. Deferring to the jury’s credibility determination and drawing all inferences in favor of the

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State, the evidence is sufficient to establish that Mr. Mejia-Rangel assaulted the officer.

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Affirmed.

A majority of the panel has determined that 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.

Schultheis, C.J.

WE CONCUR:

Brown, J.

Korsmo, J.