

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 27756-9-III

Respondent,

Division Three

v.

JENNIFER E. BOSTON,

Appellant.

UNPUBLISHED OPINION

Schultheis, C.J. — Jennifer Boston appeals her conviction of second degree assault, contending the evidence is insufficient to support the conviction. We affirm.

FACTS

The State charged Ms. Boston with first degree robbery and second degree assault. At trial, Bruce Anderson, a store manager for Blockbuster Video, testified that he saw a young man, later identified as Jerrel Hale, enter the store and browse for about 15 to 20 minutes. He stated that the security alarm was triggered when Mr. Hale left the store. Mr. Anderson confronted Mr. Hale at the exit and asked him to stop but Mr. Hale ran off to a parking lot. Mr. Anderson chased Mr. Hale, saw him jump into an idling car, and

heard him yell, “Go!” Report of Proceedings (RP) at 131. Mr. Anderson observed that the driver, Ms. Boston, looked surprised and then drove the car in reverse about 25 to 30 feet before hitting a light post.

Mr. Anderson testified that he then walked about three feet in front of the car and that Ms. Boston looked directly at him and pulled down the gearshift. He stated, “I knew I had to get out of the way or I was going to be run over.” RP at 134. He spun away from the approaching car and began to run because Ms. Boston continued to accelerate. He explained:

I spun, because I knew it was coming towards me. The car went past me. It wasn't moving very fast, because they were trying to make the turn towards the driveway. I ran up to the passenger door where the window was open, and I told the kid, I said, I want my games back! He was, I don't have your games! By that time, the car was moving too fast for me to keep up.

RP at 34-35. Mr. Anderson testified that if he had not moved out of the way, he would have been knocked down by the car.

Marcus Mendoza, a Blockbuster employee, confirmed Mr. Anderson's version of events. He testified that he watched Mr. Anderson chase Mr. Hale out of the store. He saw Mr. Hale enter a car with a female driver while Mr. Anderson continued to chase him. He saw Mr. Anderson get in front of the car and the driver accelerate toward Mr. Anderson. Mr. Mendoza stated, “He had to move quickly, because she was moving

quickly forward.” RP at 162.

Ms. Boston testified that on the date in question, she ran into Mr. Hale, a friend from high school, in a grocery store. She stated that he asked for a ride to another store and asked her to stop at Blockbuster along the way. She remained in the car while Mr. Hale went inside. She explained that she panicked when she saw Mr. Hale run out of the store and jump in the car. She testified,

The store employee was running after [Mr. Hale], and he ran in front of my car. Then I had to put it into drive, and he was coming around the front of my car on the passenger side, on the front. I started to go very slowly. At that point, [Mr. Anderson] was at the passenger door, trying to open the door.

RP at 202. Ms. Boston stated that she had no intention of hitting Mr. Anderson, explaining, “It happened so quickly. I was in a panic. I didn’t know what was going on. I was just trying to leave like he had shouted at me to do.” RP at 202.

The jury acquitted Ms. Boston of the first degree robbery charge but found her guilty of second degree assault.

ANALYSIS

The only issue before us is whether the evidence was sufficient to convict Ms. Boston of second degree assault. Evidence is sufficient to support a conviction if, viewed in the 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.” *Id.* In determining the sufficiency of the evidence, we consider circumstantial evidence as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). 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).

Second degree assault occurs when a person, using a deadly weapon, assaults another with intent either to create an apprehension of bodily harm or to cause bodily harm. *State v. Byrd*, 125 Wn.2d 707, 712-13, 887 P.2d 396 (1995); RCW 9A.36.021(1)(c).¹

Ms. Boston argues that there is no evidence she intended to hurt Mr. Anderson or create the apprehension of bodily harm. She contends, “All of the evidence suggests Ms. Boston was in a panic and she simply drove forward and turned to get out of the parking lot and away from the Blockbuster store.” Br. of Appellant at 5. We disagree.

An assault is committed when “one, with intent to cause a reasonable apprehension of immediate bodily harm (though not to inflict such harm), does some act

¹ “(1) A person is guilty of assault in the second degree if he or she, under circumstances not amounting to assault in the first degree: . . . (c) Assaults another with a deadly weapon.” RCW 9A.36.021(1)(c).

which causes such apprehension.’” *State v. Krup*, 36 Wn. App. 454, 458, 676 P.2d 507 (1984) (quoting Wayne R. LaFave & Austin W. Scott, Jr., *Handbook on Criminal Law* 611 (1972)). Intent may be established from all the circumstances. *State v. Gallo*, 20 Wn. App. 717, 729, 582 P.2d 558 (1978). A rational fact finder may infer from the evidence that a defendant “intends the natural and probable consequences of his or her acts.” *State v. Caliguri*, 99 Wn.2d 501, 506, 664 P.2d 466 (1983).

The circumstances here support the jury’s conclusion that Ms. Boston intended to create a reasonable apprehension of bodily harm. Mr. Anderson was standing three feet in front of Ms. Boston’s car when Ms. Boston looked directly at Mr. Anderson, put the deadly weapon (the car) in drive, accelerated the car toward him, and would have hit him but for Mr. Anderson spinning out of harm’s way. Mr. Anderson testified that the acceleration of the car toward him made him nervous and apprehensive. Although Ms. Boston testified that she was in a panic and did not intend to hurt Mr. Anderson or place him in fear, the jury was free to reject her testimony. *Thomas*, 150 Wn.2d at 874-75. The “natural and probable consequences” of Ms. Boston’s acts support a reasonable inference that she intended to place Mr. Anderson in fear of bodily harm. *Caliguri*, 99 Wn.2d at 506.

Viewing the facts most favorably to the State, sufficient evidence supports Ms. Boston’s conviction for second degree assault. Accordingly, we affirm.

No. 27756-9-III
State v. Boston

A majority of the panel has determined that this opinion will not be printed in the

No. 27756-9-III
State v. Boston

Washington Appellate Reports but it will be filed for public record pursuant to RCW
2.06.040.

Schultheis, C.J.

WE CONCUR:

Brown, J.

Kulik, J.