

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

KIMBERLY ARLANDIS PATTERSON,

Appellant.

No. 38569-4-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Kimberly Arlandis Patterson appeals his jury trial conviction for fourth degree assault/domestic violence.¹ RCW 9A.36.041(1); RCW 10.99.020. He argues that the evidence was insufficient to support his conviction. We affirm.

Facts

Patterson and Tina Patterson are legally married and have a daughter, M.P. The couple have been separated for about three years. A no-contact order prohibits Patterson from coming within 1,000 feet of Tina,² but allows for telephonic contact and does not prohibit Patterson from

¹ A jury also found Patterson guilty of violation of a no-contact order, but he does not appeal this conviction.

² We use Tina's first name for clarity and intend no disrespect.

exercising visitation rights with M.P. On two previous occasions, Patterson has violated a no-contact order prohibiting contact with Tina.

Because of the no-contact order, after visitation with Patterson, Tina picks up M.P. by waiting at one end of a field and M.P. runs to Tina from the other end of the field near Patterson's house. On July 23, 2008, Tina made arrangements to pick up M.P. from Patterson at 11:00 pm.

Tina brought her boyfriend, Mark Hawkinson, with her that night to pick up M.P. When Tina and Hawkinson arrived at the pre-arranged field, Patterson would not let go of M.P. as planned. Tina testified that Patterson was aggressive and argumentative, and that she was concerned for her safety and the safety of her daughter. Eventually, M.P. broke free from her father's hold and ran to Tina. Tina placed M.P. in the back seat of the van, but as Tina was about to close the front passenger door, Hawkinson testified that Patterson ripped open the door, launched himself across Tina and the console, and started punching Hawkinson as the van rolled down the street with the door open.

Hawkinson was in the driver's seat and lost his footing on the brake when Patterson began punching him. During this altercation, Patterson "was smothering" Tina. 1 Report of Proceedings (RP) at 121. His lower torso and legs were on top of Tina while he punched Hawkinson. As the van rolled down the street, it knocked down mailboxes and garbage cans and finally came to a rest only when it rolled into a ditch. After the van stopped, Hawkinson and Tina were honking the car horn and yelling for somebody to call 911. Patterson got out of the van and walked back to his house. Hawkinson, who sustained a bloody nose, bruising on his face, and a bite on his arm, described the events that night as "chaotic." 1 RP at 49.

Once the police arrived, they obtained statements from Hawkinson and Tina about the

altercation and arrested Patterson. A jury found Patterson guilty as charged of fourth degree assault/domestic violence for assaulting Tina. He appeals.

Discussion

Patterson contends that the State presented insufficient evidence for a jury to determine that he intentionally assaulted Tina. We disagree.

Standard of Review

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, 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 reasonable inferences that a trier of fact can draw from that evidence. *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). Credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (citing *State v. Longuskie*, 59 Wn. App. 838, 844, 801 P.2d 1004 (1990)), *review denied*, 119 Wn.2d 1011 (1992).

A person commits fourth degree assault “if, under circumstances not amounting to assault in the first, second, or third degree, or custodial assault, he or she assaults another.” RCW 9A.36.041(1). Because “assault” is not statutorily defined, Washington courts apply the common law definition. *State v. Stevens*, 158 Wn.2d 304, 310-11, 143 P.3d 817 (2006). The three definitions of criminal assault recognized in Washington are ““(1) an attempt, with unlawful force,

to inflict bodily injury upon another; (2) an unlawful touching with criminal intent; and (3) putting another in apprehension of harm whether or not the actor intends to inflict or is incapable of inflicting that harm.” *Clark v. Baines*, 150 Wn.2d 905, 908 n.3, 84 P.3d 245 (2004) (quoting *State v. Aumick*, 126 Wn.2d 422, 426 n.12, 894 P.2d 1325 (1995)). Intent is a court-implied, rather than a statutorily-defined, element of fourth degree assault. *State v. Walden*, 67 Wn. App. 891, 894, 841 P.2d 81 (1992) (citing *State v. Davis*, 119 Wn.2d 657, 662, 835 P.2d 1039 (1992)).

Drawing all reasonable inferences in favor of the State, the evidence presented was sufficient for a jury to find that Patterson committed fourth degree assault/domestic violence against Tina. A jury could reasonably conclude that Patterson put Tina in a state of apprehension of harm, regardless of whether or not Patterson actually intended to inflict harm. Tina testified that she was concerned for her safety, there was a standing no-contact order, and, in clear violation of the no-contact order, Patterson launched his body across Tina while he pummeled her boyfriend, Hawkinson. Patterson’s attack caused the van that Tina, Hawkinson, and M.P. were riding in to coast down the road and run over mailboxes and garbage cans and, eventually, run into a ditch.

Although fourth degree assault does not require the State to show that Patterson intended to put Tina in a state of apprehension, the evidence here clearly indicates that Patterson did so when he refused to release M.P., pulled open the door of the moving car, and attacked its driver

No. 38569-4-II

while his body “smothered” Tina. Taken in a light most favorable to the jury’s verdict, this evidence is sufficient to support Patterson’s conviction for fourth degree assault and 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 pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

BRIDGEWATER, P.J.

ARMSTRONG, J.