IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. RACHEEM DEMETRIUS HAMILTON, Appellant.	No. 38949-5-II UNPUBLISHED OPINION

Penoyar, J. — Racheem Hamilton appeals his second degree assault conviction, arguing that the State failed to present sufficient evidence. He also raises issues in a statement of additional grounds (SAG) under RAP 10.10. Concluding that the State presented sufficient evidence and that Hamilton's SAG issues lack merit, we affirm.[1]

facts

On November 19, 2008, Ernest Brunzelle, a loss prevention officer at a Safeway store in Olympia, saw Hamilton select food items from the deli counter and leave the store without paying for them. Brunzelle and his partner, James Maarsingh, approached Hamilton. Brunzelle approached Hamilton from the rear and put his hand on Hamilton's elbow. Hamilton began to struggle with Brunzelle. During the struggle, Brunzelle "saw a flash of silver" that he thought might be a knife. Report of Proceedings (Jan. 26, 2009) (RP) at 33. With the assistance of others, Brunzelle and Maarsingh subdued Hamilton. When they did so, Brunzelle saw a partially opened knife on the ground four feet from where he and Hamilton fell during the struggle.

The State charged Hamilton with first degree robbery while armed with a deadly weapon

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

or, in the alternative, second degree assault while armed with a deadly weapon. The jury found him guilty of second degree assault. Hamilton now appeals.

analysis

Hamilton argues first that the State failed to present sufficient evidence that he assaulted Brunzelle with a deadly weapon. Evidence is sufficient to support a conviction if any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the State. *State v. Thomas,* 150 Wn.2d 821, 874, 83 P.3d 970 (2004). An appellant claiming insufficiency of the evidence "admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Thomas*, 150 Wn.2d at 874 (quoting *State v. Salinas,* 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)).

A conviction for second degree assault under RCW 9A.36.021(1)(c) requires proof beyond a reasonable doubt that the defendant "[a]ssaults another with a deadly weapon." Taken in the light most favorable to the State, during his struggle with Hamilton, Brunzelle saw what he thought might be a knife. After subduing Hamilton, he saw a partially opened knife four feet away. Anthony Trujillo, a Safeway employee who assisted in subduing Hamilton, saw Hamilton reach into his pocket and pull out "an item that was shiny and glimmered in the light." RP (Jan. 26, 2009) at 67. Trujillo identified the partially opened knife as the item he saw Hamilton pull out of his pocket. Sean Kish, a bystander, saw Hamilton's hand come out of his pocket with a partially opened knife in it. The knife had a three-inch blade. The State presented sufficient evidence that Hamilton assaulted Brunzelle with a deadly weapon.

In his SAG, Hamilton raises three issues. First, he argues that the prosecutor presented the court with false information in support of his motions for continuance. Even if the prosecutor

did as Hamilton describes, he fails to show any prejudice resulting from the continuances. Second, he argues that the trial court erred by denying his motion to dismiss the robbery charge at the end of the State's case. Even if the court erred, the error was harmless because the jury acquitted him of that charge. Third, he argues that the trial court erred by allowing the State to add the alternative second degree assault charge at the beginning of his trial. Under CrR 2.1(d), the court may permit the State to amend its information at any time before verdict "if substantial rights of the defendant are not prejudiced." Hamilton does not identify any of his rights that were prejudiced. He contends that the second degree assault while armed with a deadly weapon charge merged into the first degree robbery charge. Had he been convicted of both charges, he might have been correct. *State v. Kier*, 164 Wn.2d 798, 814, 194 P.3d 212 (2008). However, he was only convicted of the lesser charge and, so, he suffered no prejudice.

We affirm.

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.

Penoyar, J.

We concur:

Van Deren, C.J.

Armstrong, J.