

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ROBERT RUFUS WILLIAMS,

Appellant.

No. 38886-3-II

UNPUBLISHED OPINION

Casey, J.P.T.¹ — Robert Rufus Williams appeals his convictions stemming from a brutal assault on Charlotte Budlong, his longtime girlfriend. He argues that the State presented insufficient evidence to convince a rational jury beyond a reasonable doubt that he was her assailant. Williams also argues that the trial court violated his right to be free of double jeopardy when it ordered that his assault conviction was valid but that, to avoid double jeopardy, he would not be sentenced for the assault unless an appellate court overturned his attempted murder conviction. We affirm Williams’s convictions in all respects but remand to the trial court to remove the conditional vacation order entered with his judgment and sentence, and to vacate his

¹ Judge Paula Casey is serving as a judge pro tempore of the Washington State Court of Appeals pursuant to CAR 21(c).

assault conviction.

FACTS

Shortly after midnight on May 31, 2007, Budlong was brutally assaulted. The last thing she remembers is walking up to her porch. With no eyewitnesses, the facts of this appeal focus on the circumstantial evidence linking Robert² to the crimes. As Robert challenges the sufficiency of the evidence, we draw all reasonable inferences in favor of the State and interpret the evidence most strongly against him. *State v. Salinas*, 119 Wn.2d 192, 829 P.2d 1068 (1992).

Sometime in the middle of May 2007, Budlong and her recent fiancé, Roy Williams, were out for a walk when Robert called her. Robert had dated Budlong for about 10 years and asked her if she wanted company for the upcoming weekend.³ Budlong told him that she was unavailable for the upcoming weekend and every weekend thereafter because she was seeing someone. Budlong thought Robert sounded surprised when he responded, “Is that right?” 9 Report of Proceedings (RP) at 870. Robert also asked at some point if she would be paying back a \$1,000 loan he had made to her.

On May 27 or 28, Budlong and Robert’s mutual friend, Bruce Barker, mentioned to Robert that Budlong and Roy were engaged. Barker had assumed that Robert knew of their engagement, but, when the news upset Robert, Barker realized that Robert must not have known.

² Because the appellant, Robert Williams, and Budlong’s fiancé, Roy Williams, are not related but share the same last name, we refer to them by their first names.

³ Budlong and Robert had been separated for about a year but had continued to occasionally see each other leading up to the time of her assault.

On May 30, Budlong left work at 11:46 pm and stopped at a gas station convenience store on her way home. She purchased a few items at 11:57 pm and put the receipt in her jacket pocket. When she arrived home, the last thing she remembers is taking some items from her truck to her front porch.

On May 31, at 1:14 am, a 911 caller reported the sound of breaking glass. Around 1:18 am, a short distance from the breaking glass sounds, Budlong's truck crashed into a fence. The crash woke Charles Scott, who owns the fence. He walked out to investigate and saw that the truck's back window was shattered. He also peered inside the passenger window and immediately noticed a large metal pipe on the passenger seat propped up on the windowsill. Scott picked up the pipe, which was about two feet long and solid. After inspecting the pipe, he returned home. His wife had called the police.

Another neighbor, Jose Hernandez-Morenos, also heard the crash and went out to investigate. He saw a pipe lying on the passenger seat. He returned home but could not sleep. About 10 to 15 minutes later, he saw a car suspiciously pull up to the truck. An older black man got out of the car, walked over to the truck, and took the pipe. He thought the man was driving a white Infiniti car.

On May 31, at 2:46 am, one of Robert's access cards was used to open the entrance gate to a Lake Trask campsite, where he lived.⁴ Lake Trask is either a 50 or 85 minute drive from Tacoma, depending on the route used.

Later that morning, around 10:00 am, Budlong's daughter, Sheryl Galmon, tried calling

⁴ Detectives found that the computer was about 11 to 12 minutes fast. Accounting for this inaccuracy, the actual time the card was used would have been 2:34 to 2:35 am.

Budlong but did not get a response. Concerned, Galmon went to Budlong's house and found her mother on a couch; she was covered in blood. Galmon called 911. Paramedics took Budlong to the hospital where she underwent surgery for severe, life-threatening injuries.

A couple days after the incident, Galmon had a phone conversation with Robert and updated him on Budlong's condition. Robert told her that "he really screwed up and he doesn't know how he's going to fix it." 6 RP at 454. Robert continued, saying something about going to South Carolina.

A police investigation ensued, and detectives met with Robert. Robert initially said that he last saw Budlong in March 2007. Later, Robert said that he saw Budlong on the day of the incident. He then told detectives that he went to a Tacoma liquor store on the same day and that he had been driving his Ford Bronco. After the liquor store, he visited a club until about 8:00 pm. He said that he picked up a prostitute, had sex, and then slept in his vehicle until the next morning, before going home around noon on May 31.

Detectives investigated Robert's Ford Bronco, which was located at his campsite. The truck did not appear to have been recently driven, or even drivable. Cobwebs and mold were growing inside the truck, pine needles and other tree debris had fallen onto the truck, and there were cobwebs between the truck and trees. Several acquaintances said that Robert usually drove his white Infiniti. One also said that Robert kept a steel bar in his car for protection.

Detectives then obtained the surveillance video for the Tacoma liquor store that Robert had visited. They confirmed that he was there on May 30 at about 4:18 p.m., but they noticed that he was driving an Infiniti car, not a Ford Bronco.

Robert was arrested on June 8. At the time of his arrest, he was carrying the key card that was used to access the Lake Trask campsite at 2:46 am on May 31. He also had about \$7,000 cash. In addition, he had an abrasion on his forehead at the hairline, faint scratches on his cheek, and some healing cuts and abrasions on his fingers in the nail bed area. In the center console of his Infiniti was the receipt that Budlong received from the convenience store just before her assault.

While being interrogated, Robert denied having been involved with Budlong's assault. When detectives posited that he did not go to her house intending to hurt her but that things instead escalated out of control, Robert nodded his head as if he agreed, while continuing to deny any involvement. The detectives also saw Robert become emotional when they told him that he should tell Galmon the truth because she deserved to know what happened to her mother. During the interrogation, detectives noticed that Robert was wearing a ring that had a shape similar to an injury on Budlong's shoulder.

Robert's blood was found in his Infiniti and on Budlong's receipt. But Budlong's DNA was not found in Robert's Infiniti, his ring, or his shoes. Nor was Robert's DNA found in Budlong's truck.

The State charged Robert with first degree burglary, first degree robbery, first degree attempted murder, and first degree assault. He moved to dismiss all charges for insufficient evidence after the State rested. The trial court denied the motion. A jury found him guilty on the burglary, robbery, and assault charges, as well as the lesser-included offense of second degree attempted murder. The jury returned special verdicts finding that Robert was armed with a deadly

weapon for each crime.

The trial court entered a judgment and sentence on the first three counts and signed a separate written order that the first degree assault conviction was valid but that it would not sentence him for assault because doing so would violate double jeopardy. The court further ordered that, should an appellate court overturn his first degree attempted murder conviction, “the defendant will be sentenced on the charge of Assault in the First Degree and the corresponding deadly weapon sentencing enhancement.” Clerk’s Papers (CP) at 116. The court sentenced Robert to 198.75 months’ confinement, plus 72 months for the weapon enhancements, for a total of 270.75 months.

ANALYSIS

I. Sufficiency of the Evidence

The first issue is whether the State presented sufficient evidence to sustain Robert’s convictions. Robert does not dispute what happened to Budlong but, rather, argues that the State’s evidence was insufficient to prove that he was the person who committed the crimes.

We review a claim of insufficient evidence for “whether any rational fact finder could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Drum*, 168 Wn.2d 23, 34-35, 225 P.3d 237 (2010) (quoting *State v. Wentz*, 149 Wn.2d 342, 347, 68 P.3d 282 (2003)). An appellant challenging the sufficiency of evidence necessarily admits the truth of the State’s evidence and all reasonable inferences that can be drawn from that evidence. *Drum*, 168 Wn.2d at 35. Circumstantial and direct evidence are equally reliable in determining sufficiency of the evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). And

we defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

Robert argues that the State presented only three pieces of evidence to show that he was Budlong's assailant: (1) a description of an older African American male near Budlong's crashed truck, (2) a description of his car, and (3) a gas station receipt found in his car. Robert ignores the nature of this evidence taken in the light most favorable to the State, and he omits other circumstantial evidence that the jury could have reasonably relied on to find that he was the assailant.

At the outset, a jury could infer that Robert had a motive to assault Budlong. Although he had not been violent with her in the past, he had a reason to be upset with her just before the incident because, after dating her for about 10 years, he learned that she was engaged to another man. From here, the State presented sufficient evidence to convince a rational jury that Robert was her assailant beyond a reasonable doubt.

First, a man who generally matched Robert's description was seen at Budlong's crashed truck. He drove up in a car that matched the description of the Infiniti that Robert owned, usually drove, and was actually driving on the day of the crimes. The man was also seen pulling a pipe out of the crashed truck that was consistent with the description of the steel pipe that Robert kept in his car for protection. Detectives also confirmed that Robert was in Tacoma on the night of the incident and that he checked into his campsite at approximately 2:35 am. Inferring that the incident occurred after Budlong arrived at home around midnight, the two-and-one-half-hour period between was sufficient time to commit the crimes, to deal with Budlong's truck, and to

drive home.

Second, Robert cooperated in the ensuing police investigation, but he told detectives inconsistent stories. He told them that he had last seen Budlong in March 2007 before saying that he had seen her on the day of the incident in May. Robert also told detectives that he was driving his Ford Bronco on the day of the incident, but the detectives determined that he was actually driving his Infiniti.

Third, detectives found forensic evidence linking Robert to Budlong's assault. In his Infiniti, they found the receipt Budlong received from the convenience store just before the assault. Both his Infiniti and the receipt were blood stained. The blood was Robert's, which is consistent with the cuts and abrasions on his fingers and nail bed area. Robert was also wearing a ring that had a shape similar to an injury on Budlong's shoulder.

Finally, although Robert denied being Budlong's assailant, he acted as if he had a guilty conscience. He spoke to Galmon shortly after the incident and said that "he really screwed up and he doesn't know how he's going to fix it." 6 RP at 454. He also mentioned going to South Carolina. Also, while being interrogated, Robert nodded his head when the detectives posited that he did not visit Budlong with the intention to hurt her but, rather, things just escalated out of control. He also became emotional when detectives urged him to tell Galmon the truth about what happened to her mother.

Taken in the light most favorable to the State, the foregoing is sufficient evidence for any reasonable juror to find beyond a reasonable doubt that Robert was Budlong's assailant. We affirm his convictions.

II. Double Jeopardy

The next issue is whether the trial court violated Robert's right to be free of double jeopardy in its treatment of the jury's first degree assault finding.

Williams was found guilty by a jury of four crimes: first degree burglary, first degree robbery, second degree attempted murder, and first degree assault. The first degree assault and second degree attempted murder findings were based on the same criminal conduct and implicate double jeopardy, as the trial court recognized.

The trial court entered a judgment and sentence for first degree burglary, first degree robbery, and second degree attempted murder. The trial court did not sentence Williams for first degree assault but entered an "ORDER RE: SENTENCING." CP at 115. That order (1) announced that Williams's first degree assault conviction was valid; (2) acknowledged that, due to double jeopardy protections, Williams was not being sentenced for the first degree assault charge or its deadly weapon enhancement; and (3) stated that "[i]n the event the charge of Attempted Murder in the Second Degree is vacated by an appellate court, the defendant will be sentenced on the charge of Assault in the First Degree and the corresponding deadly weapon sentencing enhancement." CP at 115-16.

Our Supreme Court recently held that a trial court violates the right to be free from double jeopardy by conditionally vacating a conviction for a lesser offense while directing that the conviction remain valid. *State v. Turner*, 169 Wn.2d 448, 465, 238 P.3d 461 (2010). "Double jeopardy prohibits courts from explicitly holding vacated lesser convictions alive for reinstatement should the more serious conviction for the same criminal conduct fail on appeal." *Turner*, 169

No. 38886-3-II

Wn.2d at 465.

Here, the trial court's order did what *Turner* prohibits and, in so doing, erred. We remand to the trial court to vacate the "Order Re: Sentencing" that it entered with the judgment and sentence.

Our Supreme Court has long recognized that a "[c]onviction in itself, even without imposition of sentence, carries an unmistakable onus which has a punitive effect." *State v. Calle*, 125 Wn.2d 769, 774, 888 P.2d 155 (1995) (quoting *State v. Johnson*, 92 Wn.2d 671, 679, 600 P.2d 1249 (1979), *cert. dismissed*, 446 U.S. 948 (1980)). *Turner* also stressed that "the rule applies even when the lesser convictions are not actually reduced to judgment and do not appear on defendants' criminal records." *Turner*, 169 Wn.2d at 465. The usual remedy for double jeopardy violations is to vacate the lesser offense. *State v. Hughes*, 166 Wn.2d 675, 686 n.13, 212 P.3d 558 (2009). Here, the trial court's order did not vacate Williams's first degree assault conviction, so we further direct the trial court to vacate that conviction on remand.

Any consequence of the conviction for attempted second degree murder being later vacated follows by operation of law and not by trial court order.

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.

Casey, J.P.T.

We concur:

No. 38886-3-II

Quinn-Brintnall, J.

Worswick, A.C.J.