



State v. M.H.

133 Wash.App. 1017 (2006) | Cited 0 times | Court of Appeals of Washington | June 12, 2006

JUDGES: Anne Ellington, Marlin Appelwick, Susan Agid.

UNPUBLISHED OPINION

M.H. was convicted in juvenile court of second degree robbery and third degree assault after he took a compact disc from a store and then pushed a security guard who confronted him. We affirm the robbery conviction but vacate the assault conviction on the grounds of double jeopardy.

FACTS

In April 2005, M.H. took a compact disc from a store in Everett Mall without paying for it. M.H. exited the mall, then, attempting to take a shortcut through the mall to reach his bus stop, reentered the mall through the employee entrance. Store manager David Smith had become suspicious of M.H.'s activities in the store, and discovered the empty compact disc case once M.H. had left. He alerted security guards, who confronted M.H. as he reentered the mall. M.H. refused to stop, and became verbally abusive when requested to do so. One security officer, Ross Ulrich, stood directly in front of M.H., blocking his path. M.H. pushed Ulrich, who then acted with other officers to restrain M.H. The missing disc was discovered in M.H.'s compact disc player.

M.H. was charged with second degree robbery and third degree assault. The store manager and three security guards, including Ulrich, testified that M.H. had pushed Ulrich. M.H. testified and admitted taking the disc, but denied pushing anyone. M.H. was convicted of both charges. He timely appealed.

ANALYSIS

Sufficiency of the Evidence

M.H. argues that insufficient evidence supported his robbery conviction because his exit from the mall established his escape to a place of temporary safety, completing the crime of theft, and precluding a charge of robbery. We disagree.

A challenge to the sufficiency of the evidence accepts the State's evidence as true and all reasonable inferences that can be drawn from it. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Evidence is sufficient if, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements at issue beyond a reasonable doubt. *Id.*



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Under the Washington robbery statute, evidence is sufficient to sustain a robbery conviction if force is used to retain possession of the property or resist apprehension. RCW 9A.56.190;¹ State v. Handburgh, 119 Wn.2d 284, 292, 830 P.2d 641 (1992); State v. Manchester, 57 Wn. App. 765, 770, 790 P.2d 217 (1990) (to sustain robbery conviction, violence need not be contemporaneous with the taking, but includes violence during flight immediately following the taking).

M.H. argues that his exit from the mall completed his escape, and as such, his acts did not constitute robbery but merely theft² and a subsequent assault for two separate acts. We must disagree. Smith testified that he spoke with M.H. inside the store, and called security while M.H. was still inside. Smith watched him leave, then discovered the missing disc, went to locate security officers, and then he and the officers saw M.H. re-enter the mall. Nothing about Smith's testimony suggests any significant time lapse between the theft of the missing disc and the apprehension of M.H. M.H.'s own testimony established that he intended immediately to catch a bus, which, in order to take a shortcut, required his re-entry into the mall. The fact that M.H.'s escape route involved a path that initially took him outside is immaterial. Leaving the building where a taking occurs does not establish a completed escape. See Manchester, 57 Wn. App. at 766 (confrontation in parking lot). To the contrary, security guards and Smith were following M.H. in pursuit. Viewed in a light most favorable to the State, the evidence was that when M.H. was accosted by guards, he was still in immediate flight from the crime.

M.H.'s reliance on State v. Johnson, 155 Wn.2d 609, 121 P.3d 91 (2005), is misplaced. There the defendant abandoned the property before using force to avoid apprehension. Id. at 610. Here, M.H. retained the disc, which was discovered in his compact disc player.

Sufficient evidence supported a conviction for second degree robbery.

Double Jeopardy

M.H. argues that his convictions for both assault and robbery violate double jeopardy, and the State agrees. We accept the State's concession, because the same evidence used to establish the second degree robbery established the third degree assault. The assault conviction must therefore be vacated. See State v. Freeman, 153 Wn.2d 765, 108 P.3d 753 (2005) (second degree assault conviction vacated where assault facilitated first degree robbery); In re Butler, 24 Wn. App. 175, 177, 599 P.2d 1311 (1979) (second degree robbery and second degree assault merge where the acts of force necessary to commit the robbery are the same as the acts of force alleging the assault).

We affirm the conviction for second degree robbery and vacate the conviction for third degree assault.

1. 'A person commits robbery when he unlawfully takes personal property from the person of another or in his presence against his will by the use or threatened use of immediate force, violence, or fear of injury to that person or his property or the person or property of anyone. Such force or fear must be used to obtain or retain possession of the property, or to



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prevent or overcome resistance to the taking; in either of which cases the degree of force is immaterial.' RCW 9A.56.190 (emphasis added).

2. Theft is defined as: 'To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services.' RCW 9A.56.020(1)(a).

