72911-0

FILED
September 15, 2015
Court of Appeals
Division I
State of Washington

NO. 72911-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JOSE JAIME ROSALES-CONTRERAS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MARY E. ROBERTS

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

IAN ITH
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 477-9497

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

Other Jurisdictions:

Statutes

Washington State:

A. ISSUE PRESENTED

1. In his challenge to the sufficiency of the evidence, Rosales-Contreras must show that after considering all the evidence and reasonable inferences in the light most favorable to the State, no rational jury could have found beyond a reasonable doubt that Rosales-Contreras intended to inflict great bodily harm upon his wife. The jury heard, among other evidence, that an extremely angry Rosales-Contreras destroyed his wife's eye with a directed punch that likely approached the force of a knockout blow. He then made a comment implying he intended the result; he refused to aid his blinded wife or even to drive her to the hospital; and he ordered her to concoct a story to hide his culpability. Given all the evidence in the light most favorable to the State, has Rosales-Contreras failed to show that no rational jury could have found he intended to inflict great bodily harm?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Jose Jaime Rosales-Contreras was charged by Amended Information with Assault in the First Degree – Domestic Violence, in violation of RCW 9A.36.011(1)(c) and RCW 10.99.020, with a present-child aggravator under RCW 9.94A.535(3)(h)(ii), alleging

an assault upon his wife, Maria (Dimas) Rosales, on April 2, 2008, in Federal Way, King County, Washington. CP 5-6. After a trial in September 2014, the jury convicted Rosales-Contreras as charged.[1] CP 66-68. The court imposed 108 months in prison. CP 72. Rosales-Contreras timely appealed. CP 77.

2. SUBSTANTIVE FACTS

In April 2008, Maria Dimas[2] and her then-husband, Jose Jaime Rosales-Contreras, lived in Federal Way, Washington, with their two young sons and Dimas's two sons from a previous relationship, Emilio Dimas, 13, and Jacob Dimas, 12. 4RP 16, 21; 5RP 72, 98.[3] Rosales-Contreras was increasingly abusive to his two stepsons, including preventing their mother from buying them such basics as shoes and toys, and forcing them to perform onerous chores. 4RP 31, 49-54; 5RP 100-01.

---

[1] Rosales-Contreras was initially charged in March 2009 with second-degree assault – domestic violence, but failed to appear at arraignment. CP 1, 78. In February 2011, Rosales-Contreras was located in Mexico and bail was increased to $750,000 as the State amended the charge to first-degree assault. CP 5-6, 78. However, he was not apprehended until January 2014, when he was returned to King County and arraigned. CP 79, 80.

[2] By the time the case went to trial, Maria Rosales had divorced Rosales-Contreras and reclaimed her maiden name, Dimas. She testified as Maria Dimas, so she is referred to as Maria Dimas here.

[3] The State has designated the verbatim reports of proceedings as follows: 1RP (September 8, 2014); 2RP (September 9, 2014); 3RP (September 10, 2014); 4RP (September 11 and 15, 2014); 5RP (September 16 and 17, 2014); 6RP (September 18, 2014; October 14, 2014; December 5 and 19, 2014).

For Dimas, life with Rosales-Contreras was a terrifying walk across eggshells, punctuated by bullying, threats, suspicion, servitude and physical abuse. 4RP 30-49. For example, in the spring of 2006, when Dimas disagreed with Rosales-Contreras about disciplining Emilio and Jacob, Rosales-Contreras choked and punched his wife, knocked her to the floor and kicked her repeatedly. 4RP 35-37. Typically, though, Rosales-Contreras would limit his blows to parts of Dimas's body covered with clothing so her marks and bruises would not show. 4RP 124. Dimas learned to recognize in Rosales-Contreras's face and body language a dangerous, welling anger that meant violence. 4RP 36-37, 43. Dimas felt imprisoned by Rosales-Contreras's abuse and his threats that he would take their younger children away to Mexico. 4RP 39.

Midafternoon on April 2, 2008, Dimas was getting ready for work when she heard Rosales-Contreras yelling at Emilio in the kitchen. 4RP 56-57. Dimas ran to the kitchen to find Rosales-Contreras a few inches from Emilio. 4RP 59. Rosales-Contreras was angry at Emilio for not finishing his chores on time. 5RP 102. Rosales-Contreras had that look — the scrunched up eyebrows, the tensed-up mouth, the high-crossed arms — that told Dimas that

he was ready to "do something." 4RP 59-60. Emilio was shaking with terror. 4RP 60.

Dimas got between her husband and her first-born son and told Rosales-Contreras not to hit Emilio. 4RP 62-63. Rosales-Contreras repeatedly ordered her to move out of the way. 4RP 63. He said, "Move or I'm going to hit you." Id. He was "furious." 4RP 64. Dimas told him, "You're not going to hurt my son; You're not going to touch my son." Id. In the next instant, she saw her husband's fist coming at her, followed by a flash of light and "unbearable pain." 4RP 64-65. The next thing she remembered, she was in the bathroom. 4RP 65.

Jacob recalled that Rosales-Contreras was grabbing at Dimas's shoulders before Rosales-Contreras suddenly raised his right hand and directed a blow to Dimas's head. 5RP 76-77. Jacob saw blood coming from his mother's left eye. 5RP 77. Emilio testified that he was cowering behind his mother when he felt his mother shake from the force of a punch. 5RP 108. Dimas slouched, curled up, and held her eye. Id. The 13-year-old Emilio helped his mother to the bathroom. Id.

Dimas recalled that after her husband punched her, he told Emilio, "Look what you did." 4RP 66. Emilio testified that his

stepfather told him that "if I had just done my chores this wouldn't have happened." 5RP 108.

Dimas lay alone in her room for hours with the pain getting worse, her left eye swollen shut. 4RP 66-69. Finally, she drove herself to an urgent-care center in Auburn. 4RP 70. Rosales-Contreras refused to drive her because "he would get arrested." 4RP 68. The doctors there sent Dimas by ambulance to Auburn Regional Medical Center, where she was transferred to Harborview Medical Center for emergency surgery because her eyeball was ruptured. 4RP 70-72, 172, 183. Rosales-Contreras finally showed up after Dimas got out of surgery at Harborview. 4RP 73.

Because she was afraid of what her husband might do if she told the truth, Dimas told doctors that one of her boys had accidentally hit her with the back of his head. 4RP 71-72. After a doctor at Harborview told her that the injuries were not consistent with that scenario, Rosales-Contreras ordered her to change her story to allege that one of her children had accidentally hit her in the eye with a toy water gun. 4RP 81.

Dimas's eye never recovered, so the withered eyeball was surgically removed and replaced with a prosthesis – a "glass eye."

4RP 83-87, 151. Dimas will never see out of her left eye again. 4RP 152-53.

The emergency-room doctor who initially treated Dimas testified that the injury was more consistent with an assault than an accidental bumping of heads. 4RP 183. A forensic pathologist testified as an expert for the State that while the injury could have been caused by a punch or by getting stabbed by a water gun, the force required was moderate to severe. 5RP 16-19. If the injury was caused by a punch, the expert said, a severe blow would be akin to a "knockout punch," while a moderate blow would not have caused a loss of consciousness. 5RP 20.

At the close of the State's case, Rosales-Contreras did not move for dismissal, and in closing he did not address intent. 5RP 128; 6RP 31-57. Instead, he contended that while "it's very sad that [Dimas] lost the use of her eye and that her marriage fell apart," she had completely fabricated the assault — and had instructed her now-adult sons to do the same — as a "tool of revenge" by a woman scorned. Id.

C. ARGUMENT

1. THE JURY HAD SUFFICIENT EVIDENCE OF INTENT TO INFLICT GREAT BODILY HARM.

Rosales-Contreras alleges insufficient evidence of his intent to inflict great bodily harm by pretending that there was no evidence in this case except the singular fact that he punched his wife once. To the contrary, the jury had ample additional evidence of his behavior before, during and after the assault to reasonably infer that Rosales-Contreras intended that his mighty single blow would inflict great bodily harm. After reviewing the evidence and its inferences in the proper light, and giving requisite deference to the jury's evaluation, this Court should reject Rosales-Contreras's argument.

a. Standard Of Review.

When reviewing a sufficiency challenge to a conviction, this Court determines whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). A sufficiency challenge admits the truth of the State's evidence and accepts all reasonable inferences from it. State v. O'Neal, 159 Wn.2d 500, 505, 150 P.3d 1121 (2007). All

reasonable inferences are drawn in favor of the State. State v. Alcantar-Maldonado, 184 Wn. App. 215, 224, 340 P.3d 859 (2014). Circumstantial evidence is no less reliable than direct evidence. State v. Embry, 171 Wn. App. 714, 742, 287 P.3d 648 (2012).

Deference must be given to the trier of fact, which resolves conflicting testimony, evaluates the credibility of witnesses, and generally weighs the persuasiveness of the evidence. State v. Beasley, 126 Wn. App. 670, 689, 109 P.3d 849 (2005). The reviewing court must not determine whether it believes the evidence at trial established guilt beyond a reasonable doubt. Green, 94 Wn.2d at 221. Instead, the factual examination must be made in a manner as devoid of subjective reactions, argument or comment as possible. Id. at 222.

b. The Jury Had Ample Evidence To Conclude That Rosales-Contreras's Powerful Punch Was Intended To Inflict Great Bodily Harm.

As relevant here, under RCW 9A.36.011, first-degree assault occurs when a person, "with intent to inflict great bodily harm ... assaults another and inflicts great bodily harm." RCW 9A.36.011(1)(c). "Great bodily harm" is "bodily injury which creates a probability of death or which causes a significant permanent disfigurement, or which causes a significant permanent loss or

impairment of the function of any bodily part or organ." RCW 9A.04.110(4)(c).

Intent is present when a person "acts with the objective or purpose to accomplish a result which constitutes a crime." RCW 9A.08.010. "Evidence of intent ... is to be gathered from all of the circumstances of the case, including not only the manner and act of inflicting the wound, but also the nature of the prior relationship and any previous threats." State v. Woo Won Choi, 55 Wn. App. 895, 906, 781 P.2d 505 (1989), review denied, 114 Wn.2d 1002, 788 P.2d 1077 (1990). Intent "may be inferred if the defendant's conduct and surrounding facts and circumstances plainly indicate such an intent as a matter of logical probability." State v. Vasquez, 178 Wn.2d 1, 8, 309 P.3d 318 (2013).

In this case, the jury had plenty of evidence beyond the simple fact of a punch to rationally conclude that Rosales-Contreras intended to inflict great bodily harm upon his wife:

- Dimas testified that Rosales-Contreras's yelling, body language and facial expressions signaled that he was angry to an extreme, violent degree. 4RP 59.
- Jacob testified that Rosales-Contreras directed his punch into Dimas's face, and the eye erupted in blood. 5RP 76-77.

A jury could reasonably infer that Rosales-Contreras intended to strike his wife in the eye.

- During the prolonged confrontation leading to the assault, Rosales-Contreras specifically warned Dimas, "Move or I'm going to hit you." 4RP 63. Any rational jury could reasonably infer premeditation, i.e., he had time to decide whether, where — and how hard — to punch his wife.
- Whereas Rosales-Contreras's usual domestic assaults seemed purposely tempered to strike parts of his wife's body that would not show, this time he specifically hit her in the eye. 4RP 124. The reasonable inference is that he intended this punishment to go well beyond his normal abuse.
- The State's expert testified that the force required to inflict such an injury with a punch would be at least a "moderate" blow up to a "knockout punch," and a moderate blow would not have caused a loss of consciousness. 5RP 20. Dimas testified the blow was so stunning that she had no memory between the flash of light and regaining awareness in the bathroom. 4RP 65. Any jury could then reasonably infer that the punch to her eye at least approached a knockout blow, and thus was thrown to cause great bodily harm.

- Immediately after hitting his wife in the eye, causing it to visibly swell and bleed, Rosales-Contreras blamed Emilio for the resulting injury. 4RP 66; 5RP 108. A reasonable jury could infer that Rosales-Contreras intended the result because he was unsurprised by it, and wholly unmoved by his wife's pain.
- Rosales-Contreras left Dimas alone in her bedroom for hours with a visibly damaged eye and extreme pain, and refused to drive her to the hospital. 4RP 66-69. The reasonable inference was that the injury was intentional and unsurprising, and that Rosales-Contreras had little, if any, concern for his wife's health and eyesight.
- Further, the jury could infer broadly from Rosales-Contreras's utter lack of remorse that the result was intended, i.e., if he had not meant to cause her such a grave injury, he would have said so and stepped up to help instead of blaming Emilio for the result and ignoring his wife's abject agony.
- Rosales-Contreras coerced his wife into concocting a story about a water-gun accident. 4RP 81. The jury could reasonably infer that he remained steadfastly unapologetic

for the specific injury to his wife and was more worried about himself.

To summarize: An exceptionally angry Rosales-Contreras warned his wife that he would hit her. He then directed what was probably a knockout punch to her eye — a sensitive, vital place he didn't usually target. He then acknowledged the result without a modicum of remorse, refused to provide meaningful aid or even a ride to the hospital, and then coerced his blinded wife to lie for him.

To be sure, the evidence in this case was subject to other inferences; other jurors could have come to different conclusions, and perhaps even voted to acquit. But Rosales-Contreras cannot say that it would have been *impossible* for any rational jury to accept the State's evidence and inferences and conclude beyond a reasonable doubt that Rosales-Contreras intended to inflict great bodily harm. Put another way, he cannot say that it would be irrational and unreasonable to find intent under these facts. And that is the standard this Court must follow. It must apply all the evidence and draw all the above reasonable inferences in the strongest favor of the State and interpret them most strongly against Rosales-Contreras, and it must not supplant this jury's evaluation of this evidence. The conviction should be affirmed.

c. Rosales-Contreras's Arguments Ignore The Totality Of The Evidence And Proffer Bright-Line Rules That Do Not Exist.

Ignoring the proper standard of review, Rosales-Contreras discusses the single punch in a vacuum to allege it was ambiguous. He also calls for bright-line factual formulas for the inference of intent to inflict great bodily harm. His arguments are meritless.

First, Rosales-Contreras offers that his single blow to his wife's eye makes the totality of the evidence "patently equivocal." See Vasquez, 178 Wn.2d at 8 ("Though intent is typically proved through circumstantial evidence, '[i]ntent may not be inferred from evidence that is patently equivocal.'") (quoting State v. Woods, 63 Wn. App. 588, 591, 821 P.2d 1235 (1991)). This argument might hold water if the *only* evidence before the jury was a single punch, devoid of other contextual evidence. But with the totality of the circumstances, the argument is a sieve.

In Vasquez, a forgery case, the court found that merely possessing forged documents is equivocal as to intent to injure or defraud, so with no other unambiguous evidence, intent could not be inferred. 178 Wn.2d at 17-18. In contrast, Vasquez drew the rule from State v. Bergeron, an attempted burglary case where a boy was caught in the wee hours of the morning after breaking a

window, and admitted he had intended to enter the house. 105 Wn.2d 1, 2-3, 711 P.2d 1000 (1985). Intent to commit a crime in the house could be inferred from the fact that the boy was wearing a hooded coat and leather gloves, which was not "patently equivocal" in its context. Id. at 20.

Reaching back farther still, Bergeron drew its rule from State v. Lewis, an attempted-grand-larceny case involving a classic "pigeon-drop" scam. 69 Wn.2d 120, 121-22, 124, 417 P.2d 618 (1966). In Lewis, the court rejected the argument that the defendants' actions were equivocal, because following the time-tested pigeon-drop script provided unambiguous evidence of intent to steal the elderly victim's money. Id. at 125-26.

Vasquez, Bergeron and Lewis together demonstrate that evidence is "patently equivocal" only where a fact alone — e.g., mere possession — is so unaccompanied by other contextual evidence that no reasonable inference of intent can be drawn. That is not the case here, where the jury heard plenty of evidence surrounding Rosales-Contreras's blow to this wife's eye to reasonably infer intent to inflict great bodily harm.

Nonetheless, Rosales-Contreras offers up State v. Pierre to proffer a rule that in order to infer intent, the "evidence must show

beyond a reasonable doubt that the force used was likely to produce great bodily harm." Appellant's Brief (AB) at 11; 108 Wn. App. 378, 31 P.3d 1207 (2001). He further avers that weaponless first-degree assaults can be proven "only where the defendant inflicted repeated, ongoing, brutal and forceful blows against an unresisting victim." AB at 11. Neither Pierre nor any other case has announced such rules, and this Court should reject Rosales-Contreras's bid to create a bright-line formula — essentially a minimum threshold as a matter of law — for inferring intent in first-degree assault cases.

To arrive at his assertions, Rosales-Contreras conflates the issues in Pierre and the different subsections of the first-degree assault statute. The Pierre court's holding addressed the element of "force or means likely to produce great bodily harm or death" in RCW 9A.36.011(1)(a), and concluded that "[c]ontrary to Pierre's position, kicking alone can constitute force or means likely to produce great bodily harm." 108 Wn. App. 385; RCW 9A.36.011(1)(a). That holding had nothing to do with the element of intent. Instead, the court noted secondarily that Pierre had conceded that his actions were sufficient to infer intent, and agreed that they were. Pierre, 108 Wn. App. at 386. By doing so, the

Pierre court in no way established the facts as a minimum calculus needed to prove intent in all first-degree assault cases.

Importantly, Rosales-Contreras was charged under a different subsection, RCW 9A.36.011(1)(c), which requires intent to inflict great bodily harm and actual infliction of great bodily harm, but does *not* include the force-or-means element in RCW 9A.36.011(1)(a). RCW 9A.36.011(1)(a, c). In a nutshell, Rosales-Contreras is attempting to install the force-and-means element of 9A.36.011(1)(a) as part of the intent element in every first-degree assault case. This must be rejected. While the massive force that Rosales-Contreras put into his punch to his wife's eye is one important factor the jury surely considered in inferring intent, there is no elemental requirement to prove a minimum degree of force or a statistical likelihood of its result.

Rosales-Contreras also turns to State v. Alcantar-Maldonado to suggest a formula in which a certain number of blows plus a certain number of injuries equals intent to inflict bodily harm, but anything less does not as a matter of law. 184 Wn. App. 215, 340 P.3d 859 (2014). Again, this Court must reject such floor-laying because sufficiency-of-the-evidence analysis is inherently fact-specific and greatly deferential to the factfinder. As Alcantar-

Maldonado itself states, "a jury may consider the manner in which the defendant exerted the force and the nature of the victim's injuries to the extent that it reflects the amount or degree of force necessary to cause the injury." Id. at 225. In Rosales-Contreras's case, there was ample circumstantial evidence surrounding his attack on his wife, including the manner and degree of force, to make inferences of his intent, and the "weight accorded to evidence is the province of the jury." Id. at 226.

So Rosales-Contreras also offers an impressive array of out-of-state cases, reaching back more than a century, to proffer a doctrine that intent to inflict great bodily harm can never be inferred when the assault used only fists, unless certain minimum formulas, i.e., extreme combinations of savagery, are satisfied. Unfortunately for Rosales-Contreras, none of the cases he offers supports this.

Most of the cited cases are murder cases with different *mens rea*, so they are of no use to the question here — whether the evidence was sufficient to find the specific *mens rea* for first-degree assault under Washington law. Specifically:

Three of the cases must be discounted out of hand because the *mens rea* at issue was specifically *intent to kill*, making the sufficiency analyses far different. People v. Mighell, 254 Ill. 53, 59,

98 N.E. 236 (1912) ("[i]t is manifest that the defendant had no intention to kill the deceased"); People v. Crenshaw, 298 Ill. 412, 416-17, 131 N.E. 576 (1921) ("no inference of an intent to kill is warranted" from a single punch); Nunn v. State, 601 N.E.2d 334, 339 (1992) (requisite intent is "intent to kill").

All the other murder cases also must be disregarded because the *mens rea* was malice, which is different and greater than the *mens rea* here. No comparisons can be made from cases in which courts applied facts under wholly different standards. See People v. Spring, 153 Cal. App.3d 1199, 1204-05, 200 Cal. Rptr. 849 (1984) (in murder case alleging a single "weak" punch killed a priest, malice is an act done with "wanton disregard for human life," involving "a high degree of probability that it will result in death.");[4] McAndrews v. People, 71 Colo. 542, 548, 208 P. 486, 24 A.L.R. 655 (1922) ("malice is implied only when the homicide is committed ... in such a manner as naturally and probably to cause death"); State v. Lang, 309 N.C. 512, 525-28, 308 S.E.2d 317 (1983) (malice inferred from a "total disregard for human life;" attack with

[4] The California Supreme Court has recently held that despite Spring, a single "sucker punch" delivered with great force was sufficient to show malice for murder — especially where, as here, the defendant did nothing to render aid or call for help. People v. Cravens, 53 Cal.4th 500, 510-11, 267 P.3d 1113, 136 Cal.Rptr.3d 40 (2012).

hands and feet does not "ordinarily" imply malice because "death would not be caused");[5] Commonwealth v. Thomas, 527 Pa. 511, 514-16, 594 A.2d 300 (1991) (malice in Pennsylvania means "wickedness of disposition, hardness of heart, cruelty, recklessness of consequences, and a mind regardless of social duty");[6] Commonwealth v. Buzard, 365 Pa. 511, 515, 76 A.2d 394 (1950) (same *mens rea* as Thomas, malice inferred by as few as two punches by large man to "small, weak man"); Commonwealth v. Dorazio, 365 Pa. 291, 299, 74 A.2d 125 (1950) (malice requires intent "equivalent in legal character to a criminal purpose aimed against life").

That leaves Rosales-Contreras with a case from Depression-era Texas and a trio of Missouri cases reaching back to Prohibition to support a notion that hands-only assaults presumptively lack intent to inflict great bodily harm. But even those cases are easily distinguishable, or support the opposite conclusion, or both.

---

[5] The North Carolina high court has long noted that Lang supports an inference of malice from a hands-only attack by a strong or mature person upon a weaker victim. State v. Elliott, 344 N.C. 242, 213-14, 475 S.E.2d 202 (1996).

[6] Thomas emphasized that "malice is a question to be determined by examining all the circumstances of the assault." 527 Pa. at 515.

In Texas in 1933, a man named Mosley insulted a man named Flournoy's boots, so Flournoy punched Mosley in an unremarkable way. Flournoy v. State, 124 Tex.Crim. 395, 396, 63 S.W.2d 558 (1933). But Mosley fell, hit his head on a curb and died of a fractured skull. Id. In Flournoy's aggravated-assault case, the court found no intent to cause such a grave injury. Id. None of these facts lend any comparison to Rosales-Contreras's case, where he delivered the eye-crushing blow and there was ample evidence that his attack on his abused wife went far beyond mundane fisticuffs between two grown men on a Texas sidewalk. Flournoy has no use here.[7]

In State v. Johnson, a Missouri hog farmer, drunk on bootleg whiskey, punched, slapped and stamped his wife in their motorboat on a riverbank, leaving her lying in the bilgewater to be hoofed upon by pigs. 318 Mo. 596, 601-02, 300 S.W. 702 (1927). The motive is lost to history, since the eyewitness did not hear anything said, and the farmer and his wife both denied the assault had happened at all. Id. The court held that "*without a showing of other facts*" the evidence was insufficient to show intent to inflict great

[7] Flournoy also has not been cited by any court of record since 1948. See McKinley v. State, 152 Tex.Crim. 167, 211 S.W.2d 745 (1948) (killing a man with a single blow from a Coke bottle is distinguished from Flournoy).

bodily harm. Id. at 604-05 (emphasis added). It should go without saying that this case is completely incomparable to the present case. Nonetheless, here there were plenty of "other facts," with Dimas and her sons testifying about the specifics of the beating and the surrounding circumstances.

The other Missouri cases only help to show the fallacy of Rosales-Contreras's argument. In State v. Himmelman, the court rejected the contention that felonious assaults require "ferocious brutality," instead affirming that assaults with fists alone can be felonious. 399 S.W.2d 58, 60 (1966). In State v. Gardner, the issue was not intent, but whether assaults with fists amount to "force likely to produce death or great bodily harm," and the court concluded that they do. 522 S.W.2d 323, 323-24 (1975).[8]

The real lesson from all these cases is this: Courts reject bright-line recipes for inferring intent to inflict great bodily harm because it is a factual issue dependent on the evidence unique to each case. This Court should decline Rosales-Contreras's invitation to concoct such a formula here. This case, as with every other sufficiency-of-the-evidence case, demands a contextual

[8] See also State v. Evans, 455 S.W.3d 452 (Mo. 2014) ("[F]irst-degree assault can certainly be upheld with evidence that he attempted to cause serious physical injury with his fists.").

consideration of the unique facts and a respectful deference to the jury's decision. Here, the jury had more than enough evidence, when viewed in the proper light and with all the favorable inferences, to find that Rosales-Contreras intended to inflict great bodily harm upon Maria Dimas.

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Rosales-Contreras's judgment and sentence.

DATED this 15TH day of September, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____
IAN ITH, WSBA #45250
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Maureen Cyr, the attorney for the appellant, at Maureen@washapp.org, containing a copy of the BRIEF OF RESPONDENT, in State v. Jose Jaime Rosales-Contreras, Cause No. 72911-0, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 15 day of September, 2015.

Name:
Done in Seattle, Washington