Supreme Court No. 99018-2
(Court of Appeals No. 52789-8-II)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MARK STREDICKE,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND DECISION BELOW

Mark Stredicke asks this Court to review the opinion of the Court of Appeals in *State v. Stredicke*, No. 52789-8-II (filed August 11, 2020).

B. ISSUES PRESENTED FOR REVIEW

1. Specific intent either to cause bodily harm or to create apprehension of bodily harm is an essential element of assault in the second degree. Here, two deputies pursued Mr. Stredicke in a car in a high-speed car chase, during which he repeatedly swerved between lanes. When the deputies attempted to run Mr. Stredicke off the road, his car swerved towards their car. Based on this evidence alone, Mr. Stredicke was convicted of second degree assault against one of the deputies. The Court of Appeals found there was sufficient evidence of Mr. Stredicke's specific intent to assault the deputy, ignoring its own precedent that proof a defendant intended to assault another with their car requires more than a collision or near miss. Because the decision is in conflict with published precedent of the Court of Appeals, review is warranted. RAP 13.4(b)(2

2. In order to prove an assault based on apprehension and fear of bodily injury, the State is required to prove the victim was actually placed in reasonable apprehension and imminent fear of bodily injury. Specifically, pursuant to *State v. Bland*, 71 Wn. App. 345, 860 P.2d 1046 (1993), the State was required to prove Deputy Jankens experienced a pre

sentiment of danger when Mr. Stredicke swerved. However, Deputy Jankens did not testify he feared bodily injury when Mr. Stredicke swerved his car. Despite this, the Court of Appeals held the fear in fact element had been satisfied, but did not address or distinguish *Bland.* Because the decision is in conflict with a published decision of the Court of Appeals, review is warranted. RAP 13.4(b)(2).

C. STATEMENT OF THE CASE

1. Mr. Stredicke leads deputies on a car chase and is beaten with a flashlight during arrest.

Pierce County Deputy Nicholas Jankens was driving a police car with his partner, Deputy Brendon Ossman, as they patrolled the Parkland-Spanaway area. RP 178, 320. At around 4:30am, they witnessed Mark Stredicke speeding through a red light. RP 178, 186–87, 322. The deputies activated their lights and followed Mr. Stredicke. RP 189, 324. Mr. Stredicke led them on an eight-minute chase, during which he sped, failed to stop at stop signs, and ran red lights. RP 196, 225. Mr. Stredicke also swerved between the oncoming lane and the correct lane, sometimes straddling the center line. RP 379. At no point during the chase did Mr. Stredicke communicate in any way with the deputies. RP 286.

After several miles of following Mr. Stredicke, the deputies decided to attempt a Pursuit Intervention Technique (PIT) maneuver, in

which a police vehicle makes contact with a fleeing vehicle in order to stall or disable it. RP 202–203, 213–214. As the deputies got into position for the PIT maneuver, Mr. Stredicke's car swerved towards them. RP 214–215. However, Mr. Stredicke's car never hit the deputies' police vehicle. RP 215, 337. Deputy Jankens was "a little surprised" by the swerve, and Deputy Ossman was "a little shocked." RP 216, 340. Deputy Ossman testified he had "no idea what [Mr. Stredicke's] intention was" in swerving. RP 295. He also testified that at all points, Mr. Stredicke's only intention appeared to be trying to get away from the deputies. RP 297.

Mr. Stredicke eventually lost control of his car and ran through a barricade and into a ravine. RP 224. Mr. Stredicke exited the vehicle and started to climb up the other side of the ravine. RP 228. He did not turn towards the deputies or acknowledge them in any way. RP 299. Other deputies soon arrived on the scene and tackled Mr. Stredicke. RP 349–50. Mr. Stredicke did not assault the arresting deputies. RP 370, 400. After Mr. Stredicke was tackled to the ground, Deputy Jankens struck him twice

in the back with his flashlight, which caused Mr. Stredicke to go limp. RP 351–52.

Mr. Stredicke was taken to the hospital and placed in a medically-induced coma for two days. CP 76. When he awoke, he had no recollection of the events of the car chase. *Id.*

Mr. Stredicke was charged with two counts of assault the second degree based on the swerve that occurred during the chase, and one count of eluding a police vehicle. CP 3–6.

2. The defense motion to dismiss the assault charges is denied.

At trial after the State rested, Mr. Stredicke made a motion to dismiss the two counts of assault. RP 402. Defense counsel argued the State had not proved Mr. Stredicke intended to assault the officers. RP 404. Defense counsel noted Mr. Stredicke had rapidly changed lanes during the entire chase, and argued Mr. Stredicke had simply been moving from one lane to the other when he swerved towards the deputies. RP 405–406.

Defense counsel concluded that "the state's basically inferring that what [Mr. Stredicke] was trying to do was hurt the deputies or get them to feel that they were being hurt. But there's no facts to support that. There's no fact to indicate that this—my client had any desire to have any

ill will against the deputies." RP 405–406. The court denied the motion. RP 416–17.

3. The jury convicts Mr. Stredicke of attempting to elude and only one count of assault, and the court sentences him to seven years.

Approximately four hours after it began deliberations, the jury submitted a question to the court. RP 507–508. The question read: "In the event that we are unable to reach a consensus on two out of three charges, how do we proceed?" CP 47; RP 507. After hearing argument from the parties, the court instructed the jury to "[p]lease continue to deliberate." CP 47; RP 509–510.

The jury reached a verdict the next day. RP 513. The jury found Mr. Stredicke guilty of the crime of assault in the second degree against Deputy Jankens, but found him not guilty of the same crime against Deputy Ossman. CP 13–14. The jury also found Mr. Stredicke guilty of attempting to elude a pursuing police vehicle, with a special verdict of endangerment. CP 14–15.

The court sentenced Mr. Stredicke to the high end of the standard range: 84 months. RP 556; CP 93.

D. ARGUMENT

1. The State did not prove specific intent.

a. Specific intent either to create apprehension of bodily harm or to cause bodily harm is an essential element of assault in the second degree.

The Fourteenth Amendment Due Process Clause requires the State prove each essential element of the crime charged beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). Evidence is sufficient only if, in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v. Hummel*, 196 Wn. App. 329, 353, 383 P.3d 592, *review denied*, 187 Wn.2d 1021 (2016).

There are three common-law definitions of assault in Washington: "(1) an unlawful touching (actual battery); (2) an attempt with unlawful force to inflict bodily injury upon another, tending but failing to accomplish it (attempted battery); and (3) putting another in apprehension of harm." *State v. Abuan*, 161 Wn. App. 135, 154, 257 P.3d 1 (2011) (internal citation and quotation marks omitted). Here, the State argued only that Mr. Stredicke had committed assault as defined by (2) and (3). *See* RP 430; CP 33 (Instruction No. 15 defining assault); CP 5–6 (amended information). The third type of assault requires the State to

prove the victim actually experienced reasonable apprehension and imminent fear of bodily injury. *Abuan*, 161 Wn. App. at 155.

"[S]pecific intent either to create apprehension of bodily harm or to cause bodily harm is an essential element of assault in the second degree." *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995). Thus the State was required to prove Mr. Stredicke swerved towards the deputies' car with the intent to either (1) inflict bodily injury to Deputy Jankens or (2) cause Deputy Jankens to be in apprehension of bodily injury. CP 33.

"[S]pecific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability." *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004) (quoting *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)) (internal quotation marks omitted). "[T]he existence of a fact cannot rest upon guess, speculation or conjecture." *State v. Hutton*, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972).

In cases where the State alleges the defendant assaulted someone with their vehicle, it is insufficient for the State to prove the defendant acted "negligently or even recklessly or illegally." *Byrd*, 125 Wn.2d at 713 (internal citation omitted). Rather, the State must provide evidence of "an actual intention to cause apprehension, unless there exists the morally worse intention to cause bodily harm." *Id.* (emphasis omitted) (internal

citation omitted). Accordingly, the fact that the defendant's actions resulted in an actual or near collision alone is insufficient to show specific intent to assault; more is required.

In *State v. Toscano*, for example, the defendant drove head-on into the middle of the road towards a deputy's patrol car, refusing to yield. *Toscano*, 166 Wn. App. 546, 551, 271 P.3d 912 (2012). The defendant subsequently "darted" into an intersection with her high beams on "like she was going to hit" the deputy. *Id.* at 551. The deputy was required to take evasive action to avoid a collision. *Id.* at 549–50. The Court of Appeals held these actions were sufficient to conclude the defendant specifically intended to create the apprehension of harm. *Id.* at 551.

Similarly in *State v. Baker*, where the assault was committed through actual battery, the defendant led the police on a high-speed pursuit during which the police attempted to run him off the road. *Baker*, 136 Wn. App. 878, 881, 151 P.3d 237 (2007). However, after the police attempted the maneuver, the defendant in *Baker* reversed, accelerated, and slammed into one patrol car, shattering the windows. *Id.* He then accelerated towards the other patrol car, forcing it to take evasive action. *Id.* The defendant then "flipped off" the officer, laughed, and sped away. *Id.* He later drove into a police motorcycle. *Id.* The Court of Appeals correctly recognized the defendant "intended to strike these officers,"

pointing to the defendant's rude gestures and laughing as evidence. *See id.*

In *State v. Backman*, an officer approached a parked truck on foot while making eye contact with the defendant, who was sitting in the driver's seat. 2015 WL 7737706 at *1, 191 Wn. App. 1031 (Dec. 1, 2015) (unpublished).[1] The officer testified that when the defendant started the truck, the officer put his hands up and told the defendant to stop. *Id.* The defendant then drove the truck directly toward the officer, requiring the officer to quickly get out of the way to avoid being hit. *Id.* The officer further testified that he and the defendant "maintained eye contact until the truck passed by." *Id.* The Court of Appeals affirmed the second-degree assault conviction, relying primarily on the fact that the defendant maintained eye contact while driving towards the officer, thus indicating an intent to cause apprehension of bodily injury. *Id.* at *3.

In sum, where a defendant is charged with assaulting another with their vehicle, the State must provide evidence of intent to assault beyond the fact of a collision or near miss.

[1] Cited as nonbinding authority pursuant to GR 14.1.

b. The State did not prove Mr. Stredicke acted with assaultive intent.

Here, the State did not produce sufficient evidence to "plainly indicate[]" that Mr. Stredicke intended to harm Deputy Jankens or place Deputy Jankens in apprehension of fear of harm "as a matter of logical probability." *Goodman*, 150 Wn.2d at 781. In fact, there was no evidence, either direct or circumstantial, concerning Mr. Stredicke's intent to assault the deputies at all. The State's evidence merely showed Mr. Stredicke swerved his car, nearly causing a collision with the deputies. This was insufficient to prove assaultive intent.

Deputy Ossman testified that at all points, Mr. Stredicke's only intention appeared to be trying to get away from them. RP 297. Deputy Jankens testified Mr. Stredicke routinely swerved during the chase, but did not testify these maneuvers appeared indicative of assaultive intent. *See* RP 379. The deputies had no communication with Mr. Stredicke during the chase; he never gestured towards them or slammed on his brakes. RP 286. Mr. Stredicke also made no statements to the deputies after his arrest, and he did not testify at trial. Although the specific swerve that was the basis for the assault charges "appeared intentional" to the deputies, Deputy Ossman testified he had "no idea what [Mr. Stredicke's] intention was" in swerving. RP 295, 339–40.

Taken in the light most favorable to the State, all this circumstantial evidence supports is a finding that Mr. Stredicke intentionally swerved—that he intentionally moved the wheel to cause his car to move, resulting in a near collision. It does not support any finding Mr. Stredicke did so with the intent to either harm Deputy Jankens or cause Deputy Jankens to fear bodily harm. Accordingly, the State only proved the *actus reas* element of the crime beyond a reasonable doubt: that Mr. Stredicke volitionally moved his car. *See e.g.*, *State v. Utter*, 4 Wn. App. 137, 140, 479 P.2d 946 (1971) ("There is a certain minimal mental element required in order to establish the *actus reas* itself.") (internal quotations and citations omitted) (emphasis added).

The Court of Appeals disregarded the lack of evidence and did not cite nor distinguish its own precedent in upholding the verdict. Slip Op. at 6–7. However, *Baker, Toscano,* and *Backman* require more than a collision or near collision to prove intent to assault. Here, Mr. Stredicke did not drive head-on towards the deputies, as in *Baker, Toscano,* and *Backman.* Mr. Stredicke did not make rude gestures, shine his high beams, or communicate with the deputies in any way, as in *Baker* and *Toscano. See* RP 364. He did not make eye contact, as in *Backman*; in fact, Deputy Jankens testified he never saw Mr. Stredicke's face at all during the pursuit. *See* RP 363. The only evidence presented at trial was

that Mr. Stredicke was swerving all over the road during the pursuit, and that he continued to do so when the deputies closed in to run him off the road. RP 379.

Because the Court of Appeals failed to follow its own precedent, review is warranted. RAP 13.4(b)(2).

2. The State also failed to prove Deputy Jankens was placed in reasonable apprehension and fear of bodily injury.

The third type of common law assault requires the State to prove the victim was placed in reasonable apprehension and imminent fear of bodily injury—that Deputy Jankens experienced "fear in fact." *Byrd*, 125 Wn.2d at 713; *Abuan*, 161 Wn. App. 155. To satisfy this element, the State was required to present evidence of Deputy Jankens' "worry and fear about the *future*; a *pre* sentiment of danger." *State v. Bland*, 71 Wn. App. 345, 356, 860 P.2d 1046 (1993) (emphasis in the original), *disapproved of on other grounds by State v. Smith*, 159 Wn. 2d 778, 154 P.3d 873 (2007). The State failed to meet this burden. *Winship*, 397 U.S. at 364; U.S. Const. amend. XIV.

At trial, Deputy Jankens testified he was merely "a little surprised" by the swerve and that he "probably wasn't real comfortable," but that he was "more focused on keeping up with the defendant." RP 340–41. He also testified he believed they would crash and would have to "fire our

way out of an airbag to take [Mr. Stredicke] into custody." RP 341. Upon repeated prodding by the prosecutor, Deputy Jankens conceded a crash "[p]robably" would have resulted in injury. RP 341. However, nothing in the record suggests Deputy Jankens definitively feared future bodily injury *at the time* of the swerve, as *Bland* requires. Any conjecture of the potential consequences of a crash instead appears to have occurred in hindsight and upon repeated prompting by the prosecutor at trial. *See* RP 340–41.

The Court of Appeals did not address *Bland* or explain why Deputy Jankens' testimony indicated a "*pre* sentiment of danger" of bodily injury. *Bland*, 71 Wn. App. at 356; Slip Op. at 7–8. Instead, the Court merely held Deputy Jankens' testimony indicated apprehension and fear of bodily injury because he believed there would be a crash. Slip Op. at 8. Because the Court of Appeals ignored *Bland*, review is warranted. RAP 13.4(b)(2).

//

E. CONCLUSION

For the reasons stated above, this Court should accept review.

DATED this 10th day of September, 2020.

Respectfully submitted,

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DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 52789-8-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office / residence / e-mail address as listed on ACORDS / WSBA website:

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. MARK MICHAEL STREDICKE, Appellant.	No. 52789-8-II UNPUBLISHED OPINION

CRUSER, J. – Mark Michael Stredicke appeals his jury trial conviction for second degree assault and the interest fee provision in his judgment and sentence.[1] He argues that the evidence was insufficient to prove that (1) he had the specific intent to inflict bodily injury or to create apprehension and fear of bodily injury, or (2) the assault victim was placed in apprehension and fear of bodily injury. Because the evidence, taken in the light most favorable to the State, supports these elements, we affirm the conviction. He further argues that the trial court erred when it imposed interest on his legal financial obligations (LFOs). We agree, and remand for the trial court to strike the interest provision in the judgment and sentence.

[1] The jury also convicted Stredicke of attempting to elude a pursuing police vehicle, but he does not challenge that conviction.

FACTS

I. BACKGROUND

On September 25, 2017, at about 4:30 AM, Pierce County Deputy Sheriffs Brendon Ossman and Nick Jankens were stopped at an intersection in their patrol car when Stredicke drove his vehicle through the intersection "at a high rate of speed." 2 Verbatim Report of Proceedings (VRP) at 186. The deputies activated the patrol car's lights and siren and pursued Stredicke. For most of the pursuit, Stredicke drove in the oncoming lane of traffic.

After observing Stredicke reaching speeds of up to 120 miles per hour, Jankens, who was driving the patrol car, attempted to stop Stredicke's vehicle by executing a PIT[2] maneuver, which required Jankens to bring the patrol car into a controlled contact with the side of Stredicke's vehicle. When the patrol car was within a few feet of the side of Stredicke's vehicle and travelling approximately 70 miles per hour, Stredicke's vehicle "swerved directly" at the patrol car, coming within less than a foot from the patrol car. 3 VRP at 337-38.

Jankens "hit the brakes" "as hard as he could," throwing the deputies forward against their seatbelts, to avoid colliding with Stredicke's vehicle. 2 VRP at 216. The deputies did not observe any obstacles in the roadway when Stredicke swerved toward the patrol car.

About eight minutes into the pursuit, Stredicke lost control of his vehicle and the vehicle ended up in a ravine. Stredicke attempted to flee on foot, but he was apprehended by other deputies.

[2] The pursuit intervention technique, commonly known as the PIT maneuver, is "a technique where a patrol vehicle will come in contact with the rear end of a vehicle and they will touch either the left or the right side and perform a quarter-turn motion into the vehicle, which . . . cause[s] the vehicle to spin out of control and usually stalls the engine." 2 VRP at 237. When performed correctly, "there's absolutely no damage to any of the vehicles, and the vehicle would come to a complete stop." *Id.* at 241.

The State charged Stredicke with two counts of second degree assault for the assaults of Ossman and Jankens and one count of attempting to elude a pursuing police vehicle. The State alleged that Stredicke had assaulted the officers with a deadly weapon or had assaulted the officers with intent to commit a felony. The case proceeded to a jury trial.

II. PROCEDURE

A. TRIAL TESTIMONY

Ossman and Jankens testified for the State as described above. Stredicke did not present any witnesses.

In addition to testifying about the pursuit, Ossman testified that when Stredicke's vehicle swerved at the patrol car, he (Ossman) thought they were going to be hit and he "was a little shocked." *Id.* at 216. He opined that if Stredicke's vehicle had hit the patrol car, "[t]here was a pretty good chance that [they] would have lost traction," "gone off the roadway," and been "very injured." *Id.* at 217.

On cross-examination, Ossman admitted that Stredicke's vehicle's movement was possibly consistent with an attempt to get back into the proper lane and that the patrol car was possibly in Stredicke's blind spot. But Ossman further testified that when Stredicke's vehicle swerved toward the patrol car, the patrol car's lights and siren were on.

Jankens characterized Stredicke's vehicle's swerving as "sudden," "fast[,] and aggressive." 3 VRP at 343. Jankens further testified that he was "a little surprised" when Stredicke swerved and that he (Jankens) thought they were going to crash. *Id.* at 340. But Jankens "was a little more focused on keeping up with [Stredicke]." *Id.* at 341.

Jankens opined that if they had crashed, the deputies probably would have been injured "at the very least." *Id.* at 341. He admitted that the patrol car could have been in Stredicke's blind spot, but Jankens testified that the patrol car's presence would have been obvious because of the lights and siren.

B. JURY INSTRUCTIONS, VERDICT, AND SENTENCING

The to-convict jury instruction for Count I required the jury to find that Stredicke assaulted Jankens either with a deadly weapon or with intent to commit attempted eluding. The jury instruction stated that the jurors did not need to be unanimous as to which of the alternatives had been proved, "as long as each juror [found] that either [alternative] ha[d] been proved beyond a reasonable doubt." Clerk's Papers (CP) at 29 (Jury Instruction 11).

The jury instructions also defined assault:

> An assault is an act done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with the apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.
>
> An assault is also an act done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

Id. at 33 (Jury Instruction 15).

The jury found Stredicke guilty of the second degree assault of Jankens and of attempting to elude a pursing police vehicle.[3] The jury also found Stredicke not guilty of the second degree assault of Ossman.

[3] The jury's verdict did not disclose whether it found Stredicke guilty of assault with a deadly weapon or whether it found him guilty of assault with intent to commit a felony. Nor did the verdict disclose whether it found Stredicke guilty of assault with intent to inflict bodily injury or assault with intent to create in another apprehension and fear of bodily injury.

At sentencing, the trial court imposed a $500 crime victim assessment. The judgment and sentence stated that the financial obligations would bear interest from the date of the judgment until they were paid in full. The judgment and sentence did not impose any restitution, but it stated that a restitution hearing would be set by the prosecutor. There is nothing in the record regarding whether the trial court later imposed any restitution.

Stredicke appeals his second degree assault conviction and the interest provision in his judgment and sentence.

ANALYSIS

I. SUFFICIENCY OF THE EVIDENCE

Stredicke first argues that the evidence was insufficient to prove that (1) he intended to inflict bodily injury (2) he intended to create apprehension and fear of bodily injury, or (3) his actions in fact created in Jankens a reasonable apprehension and imminent fear of bodily injury. We disagree.

A. LEGAL PRINCIPLES

Evidence is sufficient to support a conviction if, viewing the evidence in the light most favorable to the State, any rational trier of fact can 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]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.* at 201. "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *Id.* at 201.

"In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence." *State v. Delmarter*, 94 Wn.2d 634, 638, 618

P.2d 99 (1980). We defer to the finder of fact on issues of conflicting testimony, witness credibility, and persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). And "the specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability." *Delmarter*, 94 Wn.2d at 638.

Washington courts use the common law definition of assault, which includes three ways to commit an assault: "(1) an unlawful touching (actual battery); (2) an attempt with unlawful force to inflict bodily injury upon another, tending but failing to accomplish it (attempted battery); and (3) putting another in apprehension of harm." *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009). The third method of committing assault, apprehension of harm, has two prongs; the State must prove that the defendant (1) acted with intent to create apprehension and fear of bodily injury in the victim and, (2) in fact created a reasonable apprehension of an imminent fear of bodily harm in the victim. *State v. Byrd*, 125 Wn.2d 707, 713, 887 P.2d 396 (1995). Under the jury instructions in this case, to prove second degree assault the State had to prove that Stredicke (1) acted with intent to inflict bodily injury on Jankens or (2) committed the act with intent to create apprehension and fear of bodily injury in Jankens and, in fact, created a reasonable apprehension an imminent fear of bodily injury in Jankens.[4]

B. INTENT ELEMENTS

Stredicke argues that "there was not sufficient evidence to 'plainly indicate[ ]' that Mr. Stredicke intended to harm Deputy Jankens or to cause Deputy Jankens to fear bodily harm 'as a matter of logical probability,'" because "there was no evidence, either direct or circumstantial, presented concerning Mr. Stredicke's intent to assault the deputies at all." Br. of Appellant at 9.

[4] The State did not assert that Stredicke had committed an actual battery.

Stredicke contends that the aggressiveness of his driving could instead be attributed to the high rate of speed at which he was driving and that, at most, the evidence shows that he intentionally moved the steering wheel, which does not establish intent to cause bodily harm or intent to cause apprehension and fear of bodily harm.

RCW 9A.08.010(1)(a) provides that "[a] person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime." Taking the evidence in the light most favorable to the State, the jury could have reasonably concluded that the circumstantial evidence demonstrated that Stredicke intentionally swerved toward the patrol car in an attempt to either inflict bodily injury or to create apprehension and fear of bodily injury so that the deputies would end the pursuit or would be unable to perform the PIT maneuver. The swerve was "sudden," "fast[,] and aggressive," suggesting that it was more than accidental. 3 VRP at 343. The timing of the swerve when there was nothing in the roadway for Stredicke to avoid was suspect. And it is highly unlikely that Stredicke did not realize that the patrol car was next to his vehicle because of the lights and siren. These facts suggest criminal intent as a matter of logical probability. Accordingly, we hold that there was sufficient evidence to prove that Stredicke intended to inflict bodily injury or intended to create apprehension and fear of bodily injury when he swerved toward the patrol car. Accordingly, this sufficiency argument fails.

C. APPREHENSION AND FEAR OF BODILY INJURY ELEMENT

Stredicke also contends that there was insufficient evidence that Jankens was placed in apprehension and fear of bodily injury because Jankens testified only that he was "a little

surprised" when Stredicke swerved and that he (Jankens) remained focused on maintaining the pursuit.[5] *Id.* at 340. We disagree.

Jankens testified that when Stredicke's vehicle swerved, he (Jankens) believed they were going to crash and that if they had crashed, the deputies would have been injured "at the very least." *Id.* at 341. Taken in the light most favorable to the State, this testimony clearly establishes that Jankens was placed in apprehension and fear of bodily injury. That Jankens also had to focus on avoiding a collision and maintaining the pursuit does not mean that Jankens could not also fear bodily injury. Accordingly, this sufficiency argument also fails.[6]

II. INTEREST PROVISION

Stredicke next argues that the trial court erred when it included a provision in the judgment and sentence that imposed interest on the LFOs.[7] We agree.

[5] Inexplicably, Stredicke raises this argument only in a footnote and does not include it in his statement of the issues pertaining to his assignments of error. The better practice is to raise and address issues in the body of the brief rather than a footnote so there is no ambiguity as to whether the appellant is seeking review of that issue. *See State v. Johnson*, 69 Wn. App. 189, 194 n. 4, 847 P.2d 960 (1993). Although there is authority allowing us to refuse to address issues raised solely in a footnote, we address this issue because it is adequately presented for our review in the footnote. *State v. Harris*, 164 Wn. App. 377, 389 n. 7, 263 P.3d 1276 (2011); *Johnson*, 69 Wn. App. at 194 n. 4.

[6] In a footnote, Stredicke notes that the verdicts on the two counts of second degree assault were inconsistent, suggesting that the jury found the evidence insufficient to establish second degree assault. But "the simple fact of verdict inconsistency does not require that we vacate a guilty verdict" if the evidence is sufficient to support the conviction. *State v. Goins*, 151 Wn.2d 728, 738, 92 P.3d 181 (2004).

[7] We note that Stredicke cites to RCW 3.50.100(4)(b). RCW 3.50.100 applies to matters in the district court. RCW 3.50.100(1). Because this matter was before the superior court, RCW 3.50.100 does not apply here.

"As of June 7, 2018, no interest shall accrue on nonrestitution [LFOs]." RWC 10.82.090(1). Stredicke was sentenced on December 10, 2018, well after this provision took effect. Accordingly, we remand to the trial court to strike the interest provision from the judgment and sentence to the extent it applies to nonrestitution LFOs.

Because the evidence, taken in the light most favorable to the State, supports the conviction for second degree assault, we affirm the conviction. But we remand for the trial court to strike the interest provision in the judgment and sentence.

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 in accordance with RCW 2.06.040, it is so ordered.

Cruser, J.

CRUSER, J.

We concur:

J., C.J.

LEE, C.J.

Glasgow, J

GLASGOW, J.

WASHINGTON APPELLATE PROJECT

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