

NO. 34080-1-II

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
CLARK COUNTY CAUSE NO. 05-8-00892-5 & 05-8-00933-6
DIVISION II, COURT OF APPEALS NO. 34080-1-II

Key
DEPUTY

STATE OF WASHINGTON,
RESPONDENTS,
vs.
JACOB TYLER CHILDRETH,
APPELLANT,
and
CHRISTOPHER EARL MOLASH,
APPELLANT.

CORRECTED BRIEF OF RESPONDENTS

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

JULIE C. CARMENA, WSBA 25796
Deputy Prosecuting Attorney

1013 Franklin Street
P.O. Box 5000
Vancouver, WA 98668-5000
360-397-2261, ext. 4048

dm 8/23/06

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RESPONSE TO ISSUES PRESENTED BY THE APPELLANT

- A. RESPONSE TO ISSUES PRESENTED BY ASSIGNMENT OF ERROR NUMBER ONE:** The trial court did not err when it timely entered its findings within the 21 day period identified in JuCR 7.11 (d).
- B. RESPONSE TO ISSUES PRESENTED BY ASSIGNMENT OF ERROR NUMBER TWO:** The trial court properly considered the defenses as presented by Jacob Childreth and Christopher Molash, and as a result, did not deny either one of them a right to a fair trial under either the Washington Constitution, Article 1, section 3, or the United States Constitution.

STATEMENT OF THE CASE

A. STATEMENT OF THE FACTS

On July 19, 2005, victim Jason Pumphrey entered the Schuck's Parking lot in Camas, Washington, and a confrontation occurred involving Joshua Hopkins, Christopher Molash and Jacob Tyler Childreth. (Molash-CP 48 and Childreth-CP 45, FF 1 and 2)¹ After the initial confrontation had ended, and no one involved had sustained any injury, Christopher Molash reignited the altercation by throwing a bottle at Pumphrey. (Molash CP 48 and Childreth-CP 45, FF 3 and 4) After Molash threw the bottle, fighting began again with Hopkins, Molash and Childreth surrounding Pumphrey. (Molash-CP 48 and Childreth 45, FF 4) At this point the altercation became three on one with

¹ Copies of the Findings of Fact and conclusions of Law entered by the Court on December 2, 2005, as to both Appellants, are attached as Exhibits One and Two, and are incorporated by reference.

Hopkins, Childreth and Molash all acting in concert. (Molash- CP 48 and Childreth CP 45, FF 4)

After the fighting has resumed, both Hopkins and Childreth continued to strike Pumphrey. (Molash-CP 48 and Childreth-CP 45, FF 5) During this portion of the altercation, Childreth kicked the victim in the ribs, and one of the youth involved picked up Pumphrey and threw him to the ground. (Molash-CP 48 and Childreth-CP 45, FF 5).

After Pumphrey had been thrown to the ground by one of the youths, and laid there immobile, Christopher Molash walked up to him, and kicked him two times in the head and face. (Molash CP 48 and Childreth-CP 45, FF 5).

Due to the force used by the youths, Pumphrey sustained substantial bodily injury which required him to spend four days in the hospital. Victim's injuries included: a fracture to his cheekbone (a fracture of the left zygomatic arch), a fracture to the T-11 vertebrae in his back, and fractures to two of his ribs. In addition, he suffered contusions and abrasions in areas including his elbows and knees. Furthermore, Pumphrey suffered a concussion as well as an injury to the back of his head, which was evidenced by bleeding. (Molash-CP 48 and Childreth-CP 45, FF 6) The injuries sustained by Pumphrey required substantial force. (Molash-CP 48 and Childreth-CP 45, FF 6) As a result of this incident neither Jacob Tyler Childreth nor Christopher Molash sustained any injuries. Joshua Hopkins may have received minor redness to his face or neck. (Molash-

CP 48 and Childreth-CP 45, FF 7). Childreth, Molash, and Hopkins were all able to walk away from the incident and did not require or seek medical attention. (Molash-CP 48 and Childreth-CP 45, FF 7). In addition, at no point during or after this incident occurred, did Joshua Hopkins, Christopher Molash, or Jacob Childreth contact law enforcement. (Molash-CP 48 and Childreth-CP 45, FF 8).

On August 9, 2005, Camas Police Officer Tim McNall contacted Jacob Childreth as part of his investigation into this matter. (Molash-CP 48 and Childreth-CP 45, FF 9) When McNall met with Jacob Childreth, Childreth admitted hitting Pumphrey in the head a couple of times, and also admitted that he also kicked Pumphrey in the ribs. (Molash-CP 48 and Childreth-CP 45, FF 9). During this meeting, Childreth told Officer McNall that Mr. Molash had left prior to the fight and he stated that Mr. Molash did not throw a bottle at Mr. Pumphrey. (Childreth-CP 45, FF 9) In addition, Childreth prepared a written statement for the officer. In the written statement, Childreth also acknowledged that he punched Pumphrey in the face a couple of times, and also kicked him. (Childreth-CP 45, FF 9) In addition, Childreth wrote in his written statement that Mr. Molash had left prior to the fight and did not participate. (Childreth-CP 45, FF 9)

When Christopher Molash was contacted by law enforcement, Molash admitted to being present initially, but told the officer that he walked away because he could tell that Hopkins wanted to fight. (Molash-CP 48 and Childreth-

CP 45, FF 10). In addition, Mr. Molash also denied throwing the bottle toward Pumphrey. (Molash-CP 48 and Childreth-CP 45, FF 10)

During trial, both Mr. Molash and Mr. Childreth provided testimony about how they felt the incident occurred. (RP 293-336, RP 345-386)

Throughout the trial, through a trial brief, through the cross examination of witnesses, the presentation of their defense case and through closing arguments, both respondents strenuously argued the respondents' position with regards to this case, and the defense of self defense and defense of others. (See Verbatim Report, Molash CP 14)

The Court, after hearing all of the evidence, and the argument of counsel, found both Mr. Childreth and Mr. Molash guilty of the crime of Assault in the Second Degree (RP 426). In addition, the court found Mr. Childreth also guilty of the crime of False Statement to a police officer. (RP 426-427) In making this ruling, the Court provided a thorough and complete analysis for its decision, and thoroughly explained why the Court did not believe that self defense and defense of others was appropriate in this case. (RP 417-427)

C. PROCEDURAL HISTORY

On August 12, 2005, the State filed an information charging Jacob Childreth with one count of Assault in the Second Degree. (Childreth- CP 1) On August 19, 2005, Christopher Molash was charged with of Assault in the Second

Degree and Tampering with a witness. (Molash-CP 2) On August 30, 2005, Joshua Hopkins was charged with one count of Assault in the Second Degree.

On October 4, 2005, the State filed an amended information in which Jacob Childreth was also charged with making a False Statement to a Police Officer. (Childreth CP 2) Mr. Molash and Mr. Childreth were joined together for trial, and Mr. Hopkins matter was severed. At the time of trial, the state withdrew count two (Tampering with a witness) against Mr. Molash. (RP 11) Mr. Molash and Mr. Childreth were tried to the bench, Judge Barbara Johnson on October 12 and 17, 2005. (See Verbatim Report) On the second day of trial, both appellants were convicted of one count of Assault in the Second Degree, and Mr. Childreth was also convicted of False Statement to a Police Officer. (RP426, 426-427) Based upon the conviction, the trial court ordered Predisposition reports as to each appellant, and the matters were set over for sentencing.

On November 7, 2005, Christopher Molash was sentenced on count one to 15-36 weeks for the Assault in the Second Degree. (Molash-CP 43) On November 15, 2005, Jacob Childreth was sentenced on count one to 15-36 weeks for the Assault in the Second Degree, and was also sentenced to three days with three days served on Count Two, the False Statement to an Officer. (Childreth-CP 11, 12) On November 18, 2005, Ms. Lavy filed a Notice of Appeal on behalf of her client, Jacob Childreth. (Childreth-CP 9) On December 2, 2005, the trial court timely entered its Findings of Fact and Conclusions of Law with regards to both

Mr. Molash and Mr. Childreth. (Childreth- CP 5, Molash-CP 48) At the time of that hearing, counsel for Christopher Molash, Darcy Scholts, filed a notice of appeal on behalf of her client. (Molash-CP 52)

ARGUMENT

D. RESPONSE TO ISSUES PRESENTED BY ASSIGNMENT OF ERROR NUMBER ONE: The trial court did not err when it timely entered its findings within the 21 day period identified in JuCR 7.11 (d).

JuCR 7.11(d) provides:

The court shall enter written findings and conclusion in a case that is appealed. The findings shall state the ultimate facts as to each element of the crime and the evidence upon which the court relied in reaching its decision. The findings and conclusions may be entered after the notice of appeal is filed. The prosecution must submit such findings and conclusions within 21 days after receiving the juvenile's notice of appeal.

The purpose of written findings of fact and conclusion of law is to enable an appellate court to review the questions raised on appeal. State v. Head, 136 Wn.2d 619, 622, 964 P.2d 1187(1998). Written findings and conclusions are necessary in order to insure "efficient and accurate" appellate review. State v. Commodore, 38 Wn. App. 244, 249-50, 684 P.2d 1364, review denied, 103 Wn. 2d 1005 (1984). Submitting late findings and conclusions are disfavored; however, such entry of findings is appropriate as long as the respondent is not

prejudiced by such a delay. State v. McGary, 37 Wn. App. 858, 861, 683 P.2d 1125(1984).

Appellant seems first to appear to claim that the entry of findings were not timely. Pursuant to JuCR 7.11, as indicated above, the state has 21 days from the filing of the notice of the juvenile's appeal to submit findings. In this case, the findings were not only submitted, but entered by the court within that mandated time frame. Appellant Childreth filed his notice of appeal on November 18, 2005. (Childreth-CP 9) The court signed and entered its findings as to both Mr. Childreth and Mr. Molash on December 2, 2005. (RP Volume IV). Appellant Molash filed his notice of appeal during the hearing with regards to the entry of findings on December 2, 2005. (Molash-CP 52) Regardless, if the Appellate Court finds in some respect that the findings were in fact untimely, the appellants have failed to illustrate that such delay prejudiced either Mr. Childreth or Mr. Molash.

Appellant then seems to claim that the court did not make finding number 12 when it announced its verdict, and claims that the state crafted finding of fact number 12 in an attempt to cover up the trial court's failure to apply the correct legal standard when it rendered its verdict upon receipt of a motion by Mr. Molash. (Childreth's appellant brief page 5-6).

However, as seen by an examination of the record in its entirety, obviously the trial court considered and found that finding of fact number 12 was appropriate and supported by the evidence.

At the time of the trial court's decision, the trial court thoroughly went through the evidence, while it provided the court's verdict and the reasons for such. (RP 417-427) The court indicated that Kelly Fich had tried to minimize the events that had occurred. (RP 422) But Fich did testify that all three boys (Molash, Hopkins, and Childreth) did circle around the victim during the altercation. (RP 423) Fich and other witnesses had indicated that during the altercation, that when the victim was lying on the ground immobile, Mr. Molash had kicked the victim in the face twice, and that she thought he made contact. (RP 423) The injuries sustained by the victim as a result of the kicks would be consistent with the fractured cheekbone, and injuries as testified to by Dr. Jackson. (RP 423) In addition, both Hopkins and Childreth also hit the victim in the face. (RP 423)

The court continued its analysis during its decision, and indicated that "the boys were acting in concert and that the result was very substantial injuries to Mr. Pumphrey."(RP 423)

The trial court then specifically considered issues of self-defense and defense of others as to both respondents. The court first examined the case as to Mr. Molash, and found that self defense did not apply to Mr. Molash, because

there was no evidence presented at trial that the victim ever directly attempted to or did contact Mr. Molash. (RP 424) In fact, the court notes, “Mr. Molash had no injuries, had no indication of being struck by Mr. Pumphrey.” (RP 424)

In addition, with regards to defense of others as to Mr. Molash, the court found that defense did not apply as well. The court found that since Mr. Hopkins was free of any hold from Mr. Pumphrey, and that Mr. Pumphrey was basically lying on the ground immobile and injured when kicked by Mr. Molash in the head, that defense of others did not apply. (RP 424) The trial court then continued in its reasoning, and stated that the use of force used by the boys in this case, was not in self defense or defense of others and “was an excessive amount of force to respond to the situation”. (RP 424)

The trial court when rendering its decision then addressed the culpability of Mr. Childreth. Again the trial court made a thorough analysis of the defenses claimed by Mr. Childreth of self defense and defense of others. The court examined Mr. Childreth own statement that, only initially when first contacted by Mr. Pumphrey, was he afraid. However, after Mr. Hopkins initially came up to Mr. Pumphrey, Mr. Childreth was no longer in fear for his own safety, and as a result, Mr. Childreth was not acting in self-defense. (RP 425)

The trial court then examined Mr. Childreth’s claims of defense of others. Again the court found self defense was not appropriate because all three boys surrounded the victim, and that all three boys took part in his injuries. (RP 425)

Furthermore, the court found that the use of force in this situation was excessive and was not reasonable based upon the circumstances. (RP 425) The trial court then examined Childreth's written and oral statements as to Childreth's conduct. Childreth admitted pushing, punching, and kicking the victim, and such conduct was in concert with the other respondents and was excessive. (RP 425-426)

Furthermore, at the time of the entry of the findings on December 2, 2005, the court noted:

Well, I do think that the State's proposed do accurately set out the findings of the court. It is difficult in an assault situation to be more detailed about what happened. The most important elements of the findings are that the youth acted together and that there was, as stated in No. 12, excessive force, and that the force was not used in self-defense or defense of others. (RP 487-488)

In addition, later after additional argument was had with regards to the findings, the court again reiterated its findings:

I feel that the findings and conclusions do reflect the findings of the court as to the material issues. Again, it is difficult to break down a fight situation into the exact sequence of events. The

principal issues, again, were those of acting together as accomplices, which the court did find; that the force was excessive and was not done for purposes of self defense or reasonably in the defense of -- of others. (RP 495-496)

Based upon the clear statements made during the verdict, as well as again when the findings were entered, the findings accurately represent the court's ruling and were not tailored to meet any potential issues that may have been raised on appeal. As a result, the court did not err when it timely entered its findings within the 21 day period identified in JuCR 7.11(d). In addition, finding number 12 was in fact a finding of the trial court and the court did apply it when rendering its verdict.

E. RESPONSE TO ISSUES PRESENTED BY ASSIGNMENT OF ERROR NUMBER TWO: The trial court properly considered the defenses as presented by Christopher Molash and Jacob Childreth, and as a result, did not deny either of them a right to a fair trial under either the Washington Constitution, Article 1, section 3, or the United States Constitution.

The State must prove every element of the crime charged beyond a reasonable doubt. State v. L.B., 132 Wn. App. 948, 952; 135 P.3d 508 (2006), referring to Washington Constitution Art. 1, Section 3; In re Winship, 397 U.S. 358, 364, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970). When a defendant raises an

issue of self-defense or defense of another, the absence of such becomes another element of the offense the State must prove beyond a reasonable doubt. State v. Acosta, 101 Wn. 2d 612, 615-16, 683 P.2d 1069 (1984). It is constitutional error to relieve the State of its burden of proving the absence of self-defense. State v. Walden, 131 Wn. 2d 469, 473, 932 P.2d 1237 (1997). However, a defendant bears the initial burden of providing some evidence that their actions were in response to circumstances amounting to self defense or defense of another. State v. Janes, 121 Wn. 2d 220, 237 850 P.2d 495 (1993).

Pursuant to RCW 9A.16.020(3), a person has a right to use force to defend himself or another against danger of injury, but such force cannot be more than is necessary.

As is indicated above, and is incorporated by reference, the court clearly found that self defense and defense of others was not an appropriate defense for either Mr. Molash or Mr. Childreth. (Molash-CP 48 and Childreth-CP 45, FF 12, RP 417-427). As indicated above, self defense was not appropriate for Mr. Molash, because as the court noted, there was no evidence that the victim ever directly attempted to assault Mr. Molash or that Mr. Molash had ever been hit or stricken. (RP 424) Furthermore, Mr. Molash testified that he was not scared of being hurt by Mr. Pumphrey because there were three of them. (RP 323-324)

In addition, the trial court found that defense of others was also not appropriate for Mr. Molash, because it found that Mr. Molash in fact kicked the

victim multiple times while the victim lay immobile on the ground. (RP 424) At the time Mr. Molash kicked the victim repeatedly in the head, there was no evidence that anyone was in danger, other than the victim. (RP 424)

As to Mr. Childreth, as indicated above, the court found that self defense and defense of another was also not appropriate. As indicated by Mr. Childreth's own testimony, and reiterated by the court in its verdict, after the original initial contact between Childreth and the victim, Mr. Childreth admitted that he did not fear of his own safety, and as a result, self defense was inapplicable. (RP 425) In addition, with regards to defense of another, the court also found that this was also not appropriate. "Credibility determinations are for the trier of fact, and cannot be reviewed on appeal." State v. Camarillo, 115 Wn. 2d 60, 71 794 P.2d 850 (1990). The trial court determined that based upon the testimony of the witnesses and the evidence presented, that Mr. Hopkins, Mr. Childreth, and Mr. Molash did in fact surround the victim, and all participated in assaulting the victim. (RP 423, 425-426) The trial court found that the appellants were acting in concert and as a result of their actions caused the very substantial injuries to the victim. (RP 423) As a result the trial court did properly examine all of the evidence, and did consider all arguments of counsel, and as a result properly considered and dismissed the claim of the lawful use of force.

F. CONCLUSION

The state respectfully requests that the Court find that the trial court's rulings should be upheld in all respects because the court did not err when it entered its findings pursuant to JuCR 7.11(d). In addition, the state respectfully requests that the Court deny the respondents request to reverse the conviction of the respondent, because the trial court did in fact properly consider all defenses presented, including the defense of lawful use of force.

Respectfully submitted this 21 day of August, 2006.

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington


JULIE C. CARMENA, WSBA#25796
Deputy Prosecuting Attorney

C.H.

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JcAnne McBride, Clerk, Clr.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK
JUVENILE

STATE OF WASHINGTON,

Petitioner,
v.

JACOB TYLER CHILDRETH,

Respondent.

DOB: 9/6/1990

(PROPOSED) FINDINGS OF FACT AND
CONCLUSIONS OF LAW

SCOMIS No. 05-8-00892-5
JUV No. 576904 05-R-015212

THIS MATTER having come before the above entitled Court for trial on October 12, 2005, and concluding October 17, 2005, the Respondent, Jacob Childreth, being personally present and represented by his trial attorney of record, Beverly Lavy, and the Plaintiff being represented by Julie C. Carmena, Deputy Prosecuting Attorney for Clark County, State of Washington, and the Court having heard and considered testimony, pleadings and argument of counsel in this case, now enters the following:

FINDINGS OF FACT

1. On July 19, 2005, victim Jason Pumphries^{*} entered the Schuck's parking lot in Camas, Washington.
2. Jacob Tyler Childreth, dob: 09-16-88, Christopher Earl Molash, dob: 01-22-89, Joshua Hopkins and Kelley Fich were at or near the Schuck's parking lot.

spelling "Pumphries" or "Pumphrey" have appeared in these proceedings

INFORMATION - 1
CC

CLARK COUNTY PROSECUTING ATTORNEY
JUVENILE DIVISION
500 WEST 11TH STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2201

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3. A minor confrontation occurred involving Mr. Pumphies, Mr. Hopkins, Mr. Molash and Mr. Childreth, which ended without injury to any of the participants.
4. Mr. Molash re-ignited the altercation by throwing a bottle at Mr. Pumphies. After Mr. Molash threw the bottle, fighting began with Mr. Hopkins, Mr. Molash and Mr. Childreth surrounding Mr. Pumphies. At this point, the altercation became three-on-one with Mr. Hopkins, Mr. Molash and Mr. Childreth acting in concert, and as accomplices to each other in their assault against the victim.
5. When the fighting resumed and with Mr. Hopkins, Mr. Childreth, and Mr. Molash surrounding Mr. Pumphies, Mr. Hopkins and Mr. Childreth intentionally struck Mr. Pumphies. Mr. Childreth also kicked Mr. Pumphies in the ribs. In addition, one of the youths involved was able to pick up and throw Mr. Pumphies to the ground and while he lay there immobile, Christopher Molash walked up to him and kicked him two times in the head and face.
6. Mr. Pumphies sustained injuries which indicate that substantial force was used upon him and that force resulted in substantial bodily injury including a fractured cheekbone (a fracture of the left ^{zygomatic} ~~zygomatic~~ arch), a fracture of the T-11 vertebrae in his back, and fractures to two of his ribs. He suffered contusions and abrasions to his elbows and knees, a concussion and an injury to the back of his head. Mr. Pumphies was required to spend several days in the hospital.
7. Neither Mr. Childreth nor Mr. Molash sustained any injuries. Mr. Hopkins may have received minor redness to his face or neck. Mr. Molash, Mr. Hopkins, and Mr. Childreth were able to walk away ^{from} ~~from~~ the incident and did not seek medical attention.
8. At no point during or after the incident did Mr. Childreth, Mr. Molash or Mr. Hopkins contact Law Enforcement.

INFORMATION - 2
CC

CLARK COUNTY PROSECUTING ATTORNEY
JUVENILE DIVISION
500 WEST 11TH STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98668-5000
(360) 397-2201

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9. When contacted by Camas Police Officer Tim McNall on August 9, 2005, Mr. Childreth admitted he hit Mr. Pumphries in the head a couple of times and kicked him in the ribs, but claimed that Mr. Molash had left prior to the fight and he stated that Mr. Molash did not throw a bottle at Mr. Pumphries. In addition, Mr. Childreth prepared a written statement for the officer. In his signed statement, he acknowledged that he punched Mr. Pumphries in the face a couple of time, and also kicked him. Furthermore, he wrote that Mr. Molash had left prior to the fight and did not participate.
10. When Mr. Molash was contacted by Camas Law Enforcement, he admitted to being present initially but said he walked away because he could tell that Mr. Hopkins wanted to fight. He also denied throwing the bottle at Mr. Pumphries.
11. The evidence presented at trial made it clear that Mr. Molash was present for the entire altercation. He helped to surround Mr. Pumphries, threw a bottle at him and kicked him in the head or face at least two times.
12. This Court finds Mr. Childreth and Mr. Molash intentionally assaulted Mr. Pumphries and beyond a reasonable doubt that the force they used for excessive and not done for the purpose of self defense and/or the defense of others.
13. The testimony of Mr. Molash and Mr. Childreth at trial was not credible, and more specifically in regards to Mr. Childreth, his statements to Officer Tim McNall about the participation of Mr. Molash was a false and/or a misleading material statement to that public servant who was engaged in official duties at the time the statement was taken.

CONCLUSIONS OF LAW

1. That the court has jurisdiction over the parties hereto and the subject matter of the action.
2. All of the above facts have been proven by the State beyond a reasonable doubt.

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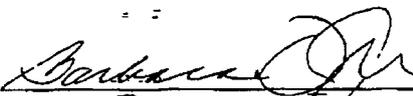
3. On July 19, 2005, in Clark County, Washington, Jacob Tyler Childreth and Christopher Molash did intentionally assault and thereby recklessly inflict substantial bodily harm upon Jason Pumphries and are guilty of the crime of Assault in the Second Degree, as charged in Count 1.

4. On August 9, 2005 in Clark County, Washington, Jacob Tyler Childreth did knowingly make a false or misleading material statement to a public servant and is guilty of the crime of False Statement to a Police Officer, as charged in Count 2.

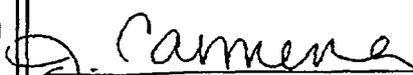
5. Mr. Childreth, Mr. Molash, and Mr. Hopkins did not act in self-defense or defense of others. The force used by Mr. Childreth, Mr. Molash, and Mr. Hopkins was excessive force.

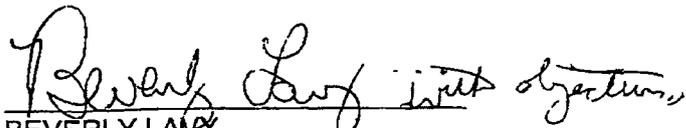
6. Mr. Childreth, Mr. Molash, and Mr. Hopkins acted as accomplices in the assault upon Mr. Pumphries.

DONE IN OPEN COURT at Vancouver, Washington this 2 day of December, 2005.


THE HONORABLE BARBARA JOHNSON
JUDGE OF THE SUPERIOR COURT

PRESENTED BY:


JULIE C. CARMENA
WSBA 25796
Deputy Prosecuting Attorney


BEVERLY LAW
WSBA 28912
Attorney for Respondent

INFORMATION - 4
CC

CLARK COUNTY PROSECUTING ATTORNEY
JUVENILE DIVISION
500 WEST 11TH STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2201

C.H.

FILED

DEC - 2 2005

JoAnne McBride, Clerk, Clark Co.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK
JUVENILE

STATE OF WASHINGTON,

Petitioner,
v.

CHRISTOPHER EARL MOLASH,

Respondent.

DOB: 1-22-1989

(PROPOSED) FINDINGS OF FACT AND
CONCLUSIONS OF LAW

SCOMIS No. 05-8-00933-6
JUV No. 638533 05-R-015608

THIS MATTER having come before the above entitled Court for trial on October 12, 2005, and concluding October 17, 2005, the Respondent, Christopher Molash, being personally present and represented by his trial attorney of record, Darcy Scholts, and the State being represented by Julie C. Carmena, Deputy Prosecuting Attorney for Clark County, State of Washington, and the Court having heard and considered testimony, pleadings and argument of counsel in this case, now enters the following:

FINDINGS OF FACT

- 1. On July 19, 2005, victim Jason Pumphries* entered the Schuck's parking lot in Camas, Washington.

Handwritten note: * spelling "Pumphries" or "Pumphrey" have appeared in these proceedings

INFORMATION - 1
CC

CLARK COUNTY PROSECUTING ATTORNEY
JUVENILE DIVISION
500 WEST 11TH STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2201

Handwritten initials: JH/MC

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- 2. Jacob Tyler Childreth, dob: 09-16-88, Christopher Earl Molash, dob: 01-22-89, Joshua Hopkins and Kelley Fich were at or near the Schuck's parking lot.
- 3. A minor confrontation occurred involving Mr. Pumphries, Mr. Hopkins, Mr. Molash and Mr. Childreth, which ended without injury to any of the participants.
- 4. Mr. Molash re-ignited the altercation by throwing a bottle at Mr. Pumphries. After Mr. Molash threw the bottle, fighting began with Mr. Hopkins, Mr. Molash and Mr. Childreth surrounding Mr. Pumphries. At this point, the altercation became three-on-one with Mr. Hopkins, Mr. Molash and Mr. Childreth acting in concert and as accomplices to each other in their assault against the victim.
- 5. When the fighting resumed and with Mr. Hopkins, Mr. Childreth, and Mr. Molash surrounding Mr. Pumphries, Mr. Hopkins and Mr. Childreth intentionally struck Mr. Pumphries. Mr. Childreth also kicked Mr. Pumphries in the ribs. In addition, one of the youths involved was able to pick up and throw Mr. Pumphries to the ground and while he lay there immobile, Christopher Molash walked up to him and kicked him two times in the head and face.
- 6. Mr. Pumphries sustained injuries which indicate that substantial force was used upon him and that force resulted in substantial bodily injury including a fractured cheekbone (a fracture of the left ^{zygomatic} ~~zygomatic~~ arch), a fracture of the T-11 vertebrae in his back and fractures to two of his ribs. Mr. Pumphries also suffered contusions and abrasions to his elbows and knees, a concussion, and an injury to the back of his head. Mr. Pumphries was required to spend several days in the hospital.
- 7. Neither Mr. Childreth nor Mr. Molash sustained any injuries. Mr. Hopkins may have received minor redness to his face or neck. Mr. Molash, Mr. Childreth, and Mr. Hopkins were able to walk away ^{from} ~~from~~ the incident and did not seek medical attention.
- 8. At no point during or after the incident did Mr. Childreth, Mr. Molash or Mr. Hopkins contact Law Enforcement.

INFORMATION - 2
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- 1 9. When contacted by Camas Police Officer Tim McNall on August 9, 2005, Mr.
2 Childreth admitted he hit Mr. Pumphries in the head a couple of times and kicked him
3 in the ribs, but he claimed that Mr. Molash had left prior to the fight and he stated that
4 Mr. Molash did not throw a bottle at Mr. Pumphries.
5
6 10. When Mr. Molash was contacted by Camas Law Enforcement, he admitted to being
7 present initially but said he walked away because he could tell that Mr. Hopkins
8 wanted to fight. He also denied throwing the bottle at Mr. Pumphries.
9
10 11. The evidence presented at trial made it clear that Mr. Molash was present for the
11 entire altercation. The evidence established that Mr. Molash actively participated in
12 the assault by, among other things: he helped to surround Mr. Pumphries, threw a
13 bottle at him and kicked him in the head or face at least two times.
14
15 12. This Court finds Mr. Childreth, Mr. Molash, and Mr. Hopkins intentionally assaulted
16 Mr. Pumphries, and beyond a reasonable doubt that the force they used was
17 excessive and not done for the purpose of self defense and/or the defense of others.

18 CONCLUSIONS OF LAW

- 19 1. That the court has jurisdiction over the parties hereto and the subject matter of the
20 action.
21
22 2. All of the above facts have been proven by the State beyond a reasonable doubt.
23
24 3. On July 19, 2005, in Clark County, Washington, Jacob Tyler Childreth and
25 Christopher Molash did intentionally assault and thereby recklessly inflict substantial
26 bodily harm upon Jason Pumphries and are guilty of the crime of Assault in the
27 Second Degree, as charged in Count 1.
28
29 4. Mr. Childreth, Mr. Molash, and Mr. Hopkins did not act in self-defense or defense of
others. The force used by Mr. Childreth, Mr. Molash, and Mr. Hopkins was
excessive force.

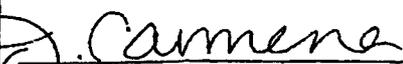
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5. Mr. Childreth, Mr. Molash, and Mr. Hopkins acted as accomplices in their assault upon Mr. Pumphries.

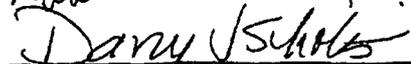
DONE IN OPEN COURT at Vancouver, Washington this 2 day of December, 2005.


THE HONORABLE BARBARA JOHNSON
JUDGE OF THE SUPERIOR COURT

PRESENTED BY:


JULIE C. CARMENA
WSBA 25796
Deputy Prosecuting Attorney

Approved as to form @ objections filed separately

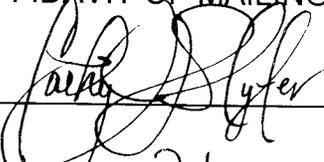

DARCY SCHOLTS
WSBA #12911
Attorney for Respondent

INFORMATION - 4
CC

CLARK COUNTY PROSECUTING ATTORNEY
JUVENILE DIVISION
500 WEST 11TH STREET • PO BOX 5000
VANCOUVER, WASHINGTON 98666-5000
(360) 397-2201

LISA ELIZABETH TABBUT
Attorney at Law
1402 Broadway
Longview WA 98632-3714

1
2 Said envelopes containing a copy of this affidavit and the original and/or a copy
of CORRECTED BRIEF OF RESPONDENT and AFFIDAVIT OF MAILING.

3
4 

5 SUBSCRIBED AND SWORN to before me this 21 day of August, 2006.

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8 NOTARY PUBLIC in and for the
State of Washington residing
at Vancouver, WA
9 MY COMMISSION EXPIRES: 10/04/07

1
2 **IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**
3 **DIVISION II**

4 **STATE OF WASHINGTON,**)
5 **Respondent,**) **NO. 34080-1-II**
6 **vs.**) **AFFIDAVIT OF MAILING**
7 **JACOB TYLER CHILDRETH,**)
8 **Appellant.**)
9 **And**
10 **CHRISTOPHER EARL MOLASH,**)
11 **Appellant.**)

11 **STATE OF WASHINGTON**)
12 **COUNTY OF CLARK**) **: ss**

13 I, CATHY J. SLYTER, being first duly sworn on oath deposes and says:

14 That your affiant is a citizen of the United States of America and of the State of
15 Washington, living and residing in Clark County, Washington, in said State; that your affiant is
16 over the age of 21 years, not a party to the above-entitled action and competent to be a
17 witness therein; that on the 21st day of AUGUST, 2006, affiant deposited in the mails of the
18 United States of America property stamped and addressed envelopes directed to the following
19 individuals, to-wit:

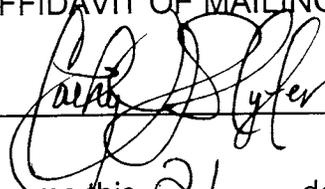
18 **CLERK OF THE COURT OF APPEALS**
19 **Division II**
20 **Suite 300, 950 Broadway**
21 **Tacoma, WA 98402-4454**

20 **JOHN A. HAYES**
21 **Attorney at Law**
22 **1402 Broadway**
23 **Longview WA 98632-3714**

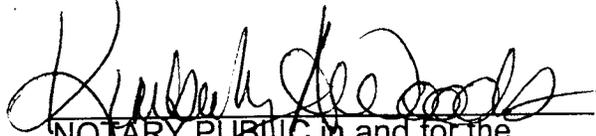
LISA ELIZABETH TABBUT
Attorney at Law
1402 Broadway
Longview WA 98632-3714

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Said envelopes containing a copy of this affidavit and the original and/or a copy of CORRECTED BRIEF OF RESPONDENT and AFFIDAVIT OF MAILING.



SUBSCRIBED AND SWORN to before me this 21 day of August, 2006.



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State of Washington residing
at Vancouver, WA
MY COMMISSION EXPIRES: 10/01/07