

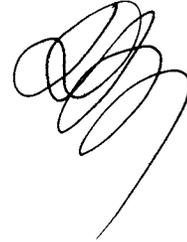
NO. 35899-9-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

KUHYAR MATTHEW SAJJADI, APPELLANT



Appeal from the Superior Court of Pierce County
The Honorable James Orlando

No. 06-8-00789-9

BRIEF OF RESPONDENT

GERALD A. HORNE
Prosecuting Attorney

By
KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Should the trial court's findings of fact 3 and 5 be treated as verities on appeal, when defendant has failed to support his assignment of error with citations to the record, argument, or authority; and because the findings are supported by substantial evidence?
2. Was there sufficient evidence to support the trial court's finding defendant guilty of assault in the second degree?

B. STATEMENT OF THE CASE.

1. Procedure

On April 25, 2006, the Pierce County Prosecuting Attorney's Office filed an information charging appellant, KUH YAR SAJJADI, hereinafter "defendant", with one count of assault in the second degree in Pierce County Superior Court Juvenile Division. CP 1-2. The matter was assigned cause number 06-8-00789-9. CP 1-2. The matter came for a bench trial before the Honorable James R. Orlando on December 13, 2006. 1RP 1.

A CrR 3.5 hearing was held at the beginning of trial, concurrent with the responding officer's testimony. 1RP 8, 14- 25. At the conclusion

of the CrR 3.5 hearing, the court ruled defendant's statement admissible in the State's case-in-chief. 1RP 25.

At the conclusion of trial, the court ruled as if it had sustained a Crawford objection during the course of trial, and thus determined it would not consider Jason Halter's medical records admitted during the testimony of Leticia Manz, the record custodian for the physician's office that treated him nor Ms. Manz's testimony. 1RP 50- 55, 156- 57.

At the conclusion of trial, the court found defendant guilty as charged. 1RP 160. The court entered the findings of fact and conclusions of law on January 23, 2007. CP 7-10.

At the sentencing hearing on January 23, 2007, the court imposed the standard range commitment of 15 to 36 weeks, a \$100 crime victim penalty assessment, and restitution in an amount to be set after a restitution hearing. 1RP 162, 171.

On February 2, 2007 defendant filed a timely notice of appeal from the entry of this judgment. CP 19-35.

2. Facts

Defendant testified that he attended Lakeridge Middle School in 2006. 1RP 129-30. Jason Halter also testified that he attended Lakeridge Middle School that year, as did Brad Paasch. 1RP 34, 55. All three youth

testified that they attended the same choir class during sixth period. 1RP 60, 118.

Brad and Jason testified that on December 15, 2006, during the choir class, the students were seated watching a movie. 1RP 35, 61. The teacher was in an adjoining room instructing other students. 1RP 62. Brad Paasch and defendant were seated approximately ten feet behind Jason Halter. 1RP 61. Both defendant and Brad testified that they were “flicking” pennies, when one of the pennies struck Jason in the nose. 1RP 35, 63, 130. Jason testified that he turned around in his seat and looked at defendant and Brad. 1RP 63. Defendant stated, “Turn around bitch.” 1RP 35, 63. Defendant then walked over to where Jason was seated and pushed him and the chair he was seated on. 1RP 35, 65. Jason fell off the side of the chair, and the chair fell over. 1RP 65.

Jason also testified that after straightening his chair and picking up his backpack, he attempted to return to his seat. 1RP 66. Defendant approached Jason and asked, “Do you want some of this?” 1RP 66. As Jason turned to face him, defendant struck Jason with a closed fist punch to the right side of Jason’s face. 1RP 66, 68. Jason testified that he was bent over after the blow, but defendant continued to strike him hard in the face repeatedly. 1RP 68. Jason fell backwards onto his back. 1RP 69.

Jason testified that the teacher entered the classroom and turned on the lights. 1RP 70. The teacher took Jason to the office where a staff member gave him an ice pack and contacted his parents. 1RP 70.

Jason testified that after the assault, his nose was bleeding, and his face was throbbing. 1RP 69. Jason continued to experience significant pain in his nose, which became very swollen. 1RP 71. Jason testified that he had a previously scheduled doctor's appointment regarding problems with his nasal passage. 1RP 71, 113. When he attended this appointment three to four days after the assault, he was referred to a specialist, Dr. Gustafson, due to the injury to his nose. 1RP 71.

During this appointment, Dr. Gustafson diagnosed that Jason had a broken nose which would require surgery. 1RP 72. She gave Jason a cast to wear until the surgery could be performed. 1RP 72. Dr. Gustafson performed the surgery two weeks later after diagnosing Jason's broken nose. 1RP 114. Jason missed one day of school while recovering from the surgery. 1RP 73.

At trial, defendant testified that he resided at 7509 West Tapps Highway East in Bonney Lake, Washington. 1RP 129. Defendant also claimed he was acting in self-defense, and out of fear that Jason would strike him first. 1RP 132. However, the trial court rejected this self

defense claim on a factual basis, as defendant never testified that he was in substantial fear or apprehension of bodily injury. 1RP 158.

Defendant's father, Mayhar Sajjadi, testified that his family presently, and at the time of the assault, resided at 7509 West Tapps Highway East, in Bonney Lake. 1RP 120. Mr. Sajjadi testified that on December 15, 2005 he was called to the school after learning his son had assaulted a student and was being suspended. 1RP 122. While at the school, Mr. Sajjadi was approached by a student, who may have been Brad Paasch, and who told him that defendant "didn't start it." 1RP 124.

C. ARGUMENT.

1. THIS COURT SHOULD TREAT THE TRIAL COURT'S FINDING OF FACT NO. 3 AND NO. 5 AS VERITIES ON APPEAL AS DEFENDANT HAS FAILED TO SUPPORT HIS ASSIGNMENT OF ERROR WITH CITATIONS TO THE RECORD, ARGUMENT OR AUTHORITY. MOREOVER, THE FINDINGS ARE SUPPORT BY SUBSTANTIAL EVIDENCE.

An appellate court reviews only those findings to which error has been assigned; unchallenged findings of fact are verities upon appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). As to challenged factual findings, the court reviews the record to see if there is substantial evidence to support the challenged facts; if there is, then those findings are also binding upon the appellate court. Id. Substantial evidence exists

when there is a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the finding. Hill, at 644. Credibility determinations are for the trier of fact and are not subject to appellate review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

In Henderson Homes, Inc v. City of Bothell, 124 Wn.2d 240, 877 P.2d 176 (1994) the Supreme Court was faced with an appellant who assigned error to the findings of fact but did not argue how the findings were not supported by substantial evidence; made no cites to the record to support its assignments; and cited no authority. The court held that under these circumstances the assignments of error to the findings were without legal consequence and that the findings must be taken as verities.

It is elementary that the lack of argument, lack of citation to the record, and lack of any authorities preclude consideration of those assignments. The findings are verities.

Henderson, 124 Wn.2d at 244; see also, State v. Jacobson, 92 Wn. App. 958, 964 n.1, 965 P.2d 1140 (1998).

In applying the above law to the present case, defendant challenges the trial court's Finding of Fact V. Appellant's Brief at 14- 18. Finding of Fact V states:

The respondent thereby inflicted substantial bodily harm in that he caused bleeding from Halter's nose, causing swelling of Halter's face and nose, cause impairment of Halter's breathing, and caused Halter considerable pain that

lasted a substantial period of time. Halter missed some school because of his injuries.

FF V, CP 7-10¹.

Defendant argues that these findings are inadequate, but fails to provide argument in the brief as to how these findings are unsupported by the evidence. Defendant fails to substantiate his challenge by citing to the record or arguing why the finding was insufficient to persuade a fair-minded, rational person of the truth of the finding. Because defendant has failed to support his assignment of error to the trial court's findings of fact with argument, citations to the record, and applicable citations to authority, this court should treat the assignment as being without legal consequence. The finding should be considered a verity upon appeal.

Moreover, this finding is supported by substantial evidence. Defendant admitted in his testimony that he struck Jason in the face. 1RP 132. Jason testified that these blows continued until he fell to the ground. 1RP 67. Jason also testified that these punches were hard strikes to his face that resulted in his face throbbing and his nose bleeding and feeling painful for a long period of time. 1RP 68- 69, 71. Jason testified that the pain was "really bad." 1RP 73- 74. Jason was referred to a specialist, Dr. Gustafson, who diagnosed Jason with a broken nose that required a

¹ See, Appendix A.

surgery to repair. 1RP 73. It was reasonable for the trial court to infer that a broken nose would cause impairment of breathing.

The above facts constitute substantial evidence because they provide the court with a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the finding. Therefore, the trial court's Finding of Fact V is binding on the appellate court.

Defendant also challenges Finding of Fact III. Appellant's Brief at 25. Finding of Fact II states:

That all relevant events occurred in Pierce County.

FF III, CP 7- 10.

Just as in defendant's challenge to Finding of Fact V, here he has also failed to argue how the findings were not supported by substantial evidence; he made no cites to the record support its assignments; and cited no authority. Defendant has failed to support his assignment of error for Finding of Fact III, and therefore this court should treat the assignment as being without legal consequence. This finding should be considered a verity upon appeal.

Additionally, Finding of Fact III is supported by substantial evidence. Deputy Solbrack testified that he was employed by the Pierce County Sheriff's Department. 1RP 14. Deputy Solbrack, Brad Paasch, Jason, and defendant all testified that the incident occurred at Lakeridge Middle School. 1RP 15, 17, 34, 35, 62- 69, 129- 30.

These facts establish substantial evidence because they provide the court with a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the finding. Therefore, the trial court's Finding of Fact III is binding on the appellate court.

2. THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE COURT'S FINDING OF GUILT.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. State v. McCullum, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983), see also, Seattle v. Gellein, 112 Wn.2d 58, 61, 768 P.2d 470 (1989), State v. Mabry, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993), State v. Rempel, 114 Wn.2d 77, 82-83, 785 P.2d 1134 (1990), State v. Green, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980), Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979).

A challenge to the sufficiency of the evidence admits the truth of the State's evidence. State v. Barrington, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), review denied, 111 Wn.2d 1033 (1988), State v. Holbrook, 66 Wn.2d 278, 401 P.2d 971 (1965), State v. Turner, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981). All reasonable inferences from the evidence must

be drawn in the favor of the State and interpreted most strongly against defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

In the present case, despite defendant's challenges to the sufficiency of the evidence, when viewed in the light most favorable to the State, the evidence in this case is sufficient to support the trial court's finding that: (1) defendant acted recklessly, (2) defendant inflicted substantial bodily harm on the victim, Jason Halter. Defendant also appears to allege that jurisdiction was not properly established to be in Washington.

- a. The trial court properly found defendant's actions to be reckless when the State proved beyond a reasonable doubt that defendant knew of the substantial risk of injury to Jason Halter, but disregarded it.

A charge of second degree assault requires that the State prove that defendant intentionally assaulted another and recklessly inflicted substantial bodily harm. RCW 9A.36.021(1)(a). The State bears the burden of proving these elements beyond a reasonable doubt. State v. McCullum, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983). A person acts recklessly when he knows of and disregards a substantial risk that a wrongful act may occur and his disregard of such substantial risk is a gross deviation from conduct that a reasonable man would exercise in the same situation. State v. R.H.S., 94 Wn. App. 844, 847, 974 P.2d 1253 (1999). Reckless conduct carries both objective and subjective

components. Id. Whether an act is reckless depends on both what defendant knew, and how a reasonable person would have acted knowing these facts. Id.

A trier of fact can find subjective knowledge of a substantial risk if there is sufficient information that would lead a reasonable person to believe that such a risk exists. Id.

In R.H.S., defendant was charged with assault in the second degree after punching a 15 year-old boy in the face, and causing him serious injury that required surgery. R.H.S., at 846. The R.H.S. court upheld the trial court's finding of recklessness, determining that the evidence was sufficient because a reasonable person would have known that punching another individual in the face could result in substantial bodily harm. "Without question, any reasonable person knows that punching someone in the face could result in a broken jaw, nose, or teeth, each of which would constitute substantial bodily harm." R.H.S. at 847.

Similarly, in the present case, a reasonable person would have known that punching another individual in the face multiple times could result in a broken nose, swelling and impairment of breathing, tenderness, and the feeling of pain in the nose area. Therefore, objectively, defendant should have known that punching Jason Halter in the face could result in a broken nose, and his other related injuries.

In this case, the court's finding of recklessness was supported by evidence in the record which suggested that defendant knew of the risk of

injury to Jason Halter, but disregarded it. Defendant asserted that he struck the victim first in self-defense out of fear of being hit himself. 1RP 131. It was reasonable for the court to infer from this that defendant therefore knew that a punch would cause pain and possibly injury as he sought to avoid it himself. On cross examination, defendant admitted that his actions were designed to initiate a fight. 1 1RP 138- 39. Defendant also testified that his reason for approaching Jason was to confront him. 1RP 140. Therefore, defendant subjectively had knowledge of the risk of injury as a result of a punch.

Just as the court properly inferred defendant's knowledge in R.H.S., based upon a reasonable person standard, so did the trial court in the present case. R.H.S. at 847.

After weighing this evidence in the light most favorable to the State, and drawing inferences in favor of the State and most strongly against defendant, the trial court's finding of recklessness is clearly supported by the record. A reasonable person would know that punching an individual could result in broken bones or other injury. Defendant's own testimony indicates that he clearly understood the risk that punching an individual could result in substantial bodily harm. Defendant chose to disregard this risk so that he could confront Jason and punch him multiple times in the face. Both the objective and subjective components of knowledge are met. The defendant acted recklessly by disregarding a known risk of substantial bodily harm to Jason.

Upon conclusion of a juvenile adjudication, the court shall state its findings of fact and enter its decision on the record. JuCR 7.11(c). The court shall also enter written findings and conclusions in a case that is appealed. JuCR 7.11(d). A court's labeling of a finding of fact as a conclusion of law does not alter the verity that it is a finding of fact. Wygala v. Kilwein, 41 Wn.2d 281, 283, 248 P.2d 893 (1952). A finding of fact erroneously described as a conclusion of law is reviewed as a finding of fact. Willener v. Sweeting, 107 Wn.2d 388, 394, 730 P.2d 45 (1986).

In Willener, the trial court issued Conclusions of Law 8 which stated that neither the plaintiff nor defendant performed under their real estate contract as bargained for. Willner, at 394. Upon review, the Washington State Supreme Court found that Conclusion of Law 8 appeared to more like a finding of fact than a conclusion of law as it contained a finding of performance and thus treated it as a finding of fact. Id.

Similarly, in the present case, the trial court issued Conclusion of Law 2 which included the finding that defendant intentionally assaulted Jason, and "thereby recklessly inflicted substantial bodily harm." CL 2, CP 7-10. Just as the Willener court determined that findings of this nature, even if included in a conclusion of law, should be treated as findings of fact, this court should also treat the trial court's finding of recklessness as a finding of fact.

So long as substantial evidence exists to support a factual finding the appellate court is bound by the finding. Hill at 647. Here, the trial court's finding of recklessness is support by substantial evidence in the record and is therefore binding upon this court.

As the State proved that defendant acted recklessly beyond a reasonable doubt, when viewed in the light most favorable to the State any rationale trier of fact would have found the essential elements of assault in the second degree beyond a reasonable doubt. Defendant's conviction may not be reversed.

- b. The court properly found that defendant inflicted substantial bodily injury when the State provided substantial evidence that defendant inflicted a temporary but substantial disfigurement upon Jason Halter.

A trial court's findings of fact will not be disturbed on appeal if supported by substantial evidence. State v. Halstien, 122 Wn. 2d 109, at 128, 857 P. 2d 270 (1993). Substantial evidence exists where the record contains a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the allegation. Halstien, at 129. In the present case, the trial court's finding of substantial bodily injury cannot be disturbed, as it is supported by substantial evidence that defendant inflicted substantial bodily injury upon Jason Halter, and the evidence is sufficient to persuade a rational person.

For a charge of assault in the second degree, the State bears the burden of proving that the defendant intentionally and recklessly inflicted substantial bodily injury. RCW 9A.36.021(1)(a). Substantial bodily harm is a “bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.” RCW 9A.04.110(4)(b). Bruise marks indicate a temporary but substantial disfigurement. State v. Ashcraft, 71 Wn. App. 444, 455, 859 P.2d 60 (1993).

A description of disfigurement as being “that which impairs or injures the beauty, symmetry, or appearance of a person or thing; that which renders unsightly, misshapen, or imperfect, or deforms in some manner” has been upheld and found accurate on the basis that it “supplemented and clarified the statutory language” and was supported by substantial evidence. State v. Atkinson, 113 Wn. App. 661, 667, 54 P.3d 702 (2002).

In Atkinson, the defendant was charged with assault in the second degree after beating his live-in girlfriend, and causing her to suffer bruising and subconjunctival hemorrhage (the white of one eye had blood inside it). Atkinson at 667. The defendant argued that the victim’s injuries did not amount to substantial harm; however, the court upheld his conviction, finding that the injuries provided substantial evidence to

render the court's instructions to the jury (containing the above definition of "disfigurement") sufficient. Atkinson at 668.

In the present case, the trial court did not consider Exhibit 4 (victim's medical records), nor the testimony of Leticia Manz, the business office manager for Dr. Gustafson's office to avoid confrontation issues. 1RP 157-58. However, even without considering this evidence, substantial evidence was admitted upon which a determination of substantial bodily harm was merited.

Brad Paasch testified that he saw blood on Jason's face immediately after the assault. 1RP 47. Jason testified that the punches were hard blows to his face, and that afterwards his face was throbbing and his nose was bleeding and painful for a substantial period of time. 1RP 68-69, 71. Jason also testified that he suffered "really bad" pain after being struck in the face. 1RP 73-74. Jason testified that his nose was swollen and broken. 1RP 71. Jason also testified that he was referred to a specialist, who later performed surgery to repair his broken nose. 1RP 73. Jason testified that he missed one day of school due to the surgery required as a result of his injuries from the assault. 1RP 73.

The above facts provide more than a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the allegation. Clearly the blows to Jason's face resulted in a bodily injury. The swelling alone constitutes a disfigurement, as it deformed Jason's face and injured or impaired his appearance. The broken nose satisfies the

statutory definition of substantial bodily harm because it is a fractured body part. RCW 9A.04.110(4)(b). Therefore, the trial court's finding of substantial bodily injury cannot be disturbed.

Defendant relies upon State v. Dolan in asserting that bruising and swelling are not always indicative of substantial disfigurement and do not always constitute assault in the second degree. Appellant's Brief 24. The State has a differing interpretation, and asserts that the ruling in Dolan held that in a *jury trial* it is improper for a judge to carry the burden of persuasion (i.e. determining whether bruising and swelling constituted sufficient evidence of substantial bodily harm), because this is a determination of fact to be made by the jury. State v. Dolan, 118 Wn. App. 323, 331, 73 P.3d 1011 (2003). However, in the present case, the trial was a bench trial where the court was finder of both fact and law. Therefore, the court was within its authority to make determinations of evidentiary sufficiency. The Dolan court did not rule, as defendant asserts, that bruising and swelling do not constitute substantial disfigurement or assault in the second degree.

Additionally, defendant's argument also ignores the fact that the victim's nose was broken and not just bruised. RCW 9A.04.110(4)(b) includes a "fracture of any bodily part" in its description of substantial bodily harm. The court could reasonably have found that Jason received a fracture of a bodily part. Defendant failed to address why Jason's broken nose did not constitute substantial bodily harm.

Upon viewing the above evidence in the light most favorable to the State, and drawing all reasonable inferences in favor of the State, it is clear that any rational trier of fact would have determined beyond a reasonable doubt that substantial bodily harm occurred, as the record contains substantial evidence to support this finding. Defendant's conviction may not be reversed.

- c. The court had proper jurisdiction as sufficient evidence from which a rational trier of fact could reasonably find that defendant's assault was committed in Pierce County.

Jurisdiction is the power of a court to hear and determine a case. WPIC 4.20, 11 Wn. Prac. 73 (1994). In order to convict a defendant of a crime in a Washington court, the State must prove it has subject matter jurisdiction over that crime. RCW 9A.04.030. Washington's long-arm criminal jurisdiction statute specifies that Washington courts have jurisdiction over any individual who commits a criminal act within the state, or against any persons or property located within the state. RCW 9A.04.030(5). In the present case, Washington has jurisdiction over defendant because his criminal actions occurred in the state, no matter which county they occurred in.

A defendant has a constitutional right to a trial in the county in which the offense is charged to have been committed. Wash. Const. art. 1, § 22. Proof of venue is necessary in a criminal prosecution. State v.

Harris, 48 Wn. App. 279, 281 738 P.2d 1059 (1987). However, venue is not an element of the crime, and need not be proved beyond a reasonable doubt. Harris, at 282.

Venue need not be proved by direct evidence, and may be found upon circumstantial evidence; venue is sufficiently established if it can be reasonably inferred from the evidence. State v. Stafford, 44 Wn.2d 353, 356, 267 P.2d 699 (1954). If the only rational conclusion from the facts in evidence is that the crime was committed in the county alleged, the proof is sufficient. Stafford at 356. A witness need not testify that the crime was committed in the county as charged, as references in the evidence to streets, public buildings or other landmarks at the scene of the crime may allow the finder of fact to presume that venue has been proved. Id.

In Brown, the defendant appealed his conviction of 10 counts of forgery and asserted that the State had failed to prove venue in King County. State v. Brown, 29 Wn. App. 11, 12, 627 P.2d 132 (1981). The court, in affirming his convictions, ruled that the State had produced sufficient evidence that the forged checks had been passed in King County, and from which the finder of fact could reasonably conclude that venue existed. Brown at 14. Similarly, in the present case, the State also provided sufficient evidence that defendant's assault occurred in Pierce County, by way of testimony from the defendant, victim, Jason Halter, Brad Paasch, and Pierce County Sheriff's Deputy Ken Solbrack all of whom referenced Pierce County.

Deputy Solbrack testified that he was employed by the Pierce County Sheriff's Department. 1RP 14. He also testified that he responded to an alleged assault at Lakeridge Middle School, and that upon contacting defendant at the school, he had defendant complete an advisement of rights form for the county. 1RP 15, 17.

Brad Paasch testified that he was attending Lakeridge Middle School at the time of the assault, and witnessed the assault occur there. 1RP 34, 35. Brad Paasch also testified that he gave a statement to a police officer at the school. 1RP 36.

Jason Halter testified that he now attends Bonney Lake High School, and attended Lakeridge Middle School at the time of the assault. 1RP 55. Jason Halter also testified that the assault took place in a classroom at Lakeridge Middle School. 1RP 62- 69.

Mayhar Sajjadi, father of the defendant, testified that his family resided in Bonney Lake, and that his son attended Lakeridge Middle School. 1RP 120- 21. Mayhar Sajjadi also testified that he received a phone call from the school notifying him that an incident involving his son had occurred there, and that he went to the school to meet with the principal. 1RP 122.

Defendant testified that he resided at the same address as his father, in Bonney Lake. 1RP 129. He also testified that he was attending Lakeridge Middle School at the time of the assault. 1RP 129-30.

Lakeridge Middle School is a public building that was referenced repeatedly by all witnesses during trial. As Lakeridge Middle School, the location at which defendant's criminal act occurred, is located in Bonney Lake, Pierce County, Washington, the evidentiary references to it were sufficient to allow the finder of fact to presume that venue had been established. Additionally, Deputy Solbrack investigated the crime on behalf of the Pierce County Sheriff's Department, which a finder of fact could reasonably infer only investigates crimes within its county.

The State was not required to prove venue beyond a reasonable doubt because it was not an element of defendant's conviction of assault in the second degree. The State did provide substantial evidence of venue through witness testimony, thus establishing that the only rational conclusion from the facts in evidence was that the crime was committed in the county alleged. As the State presented sufficient evidence from which a rational trier of fact could reasonably find that defendant's assault was committed in Pierce County, venue was properly established and defendant's conviction may not be reversed.

Additionally, in a court of competent jurisdiction, questions of venue are waived if not challenged. State v. Miller, 59 Wn.2d 27, 29, 365 P.2d 612 (1961). Any objection to venue must be made as soon as the defendant has knowledge upon which to make it, or the objection will be deemed waived. Harris, at 282, *discussing* CrR 5.1(b).

In Harris, the court upheld the defendant's conviction of three counts of indecent liberties, and found that he had waived his challenges to venue by failing to object in a timely manner. Harris at 282. The court reasoned that because the Harris defendant failed to object to venue until the conclusion of the State's case, he had waived any objection to venue, including objections to the court's "to convict" instructions. Harris at 283.

Similarly, in the present case, defendant failed to object to venue at any time during or after trial, and therefore has waived objections to venue. Because defendant failed to preserve this issue, it is not available for review.

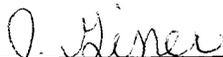
D. CONCLUSION.

For the foregoing reasons, the State asks this court to affirm the conviction below.

DATED: SEPTEMBER 6, 2007

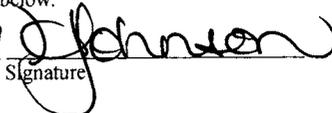
GERALD A. HORNE
Pierce County
Prosecuting Attorney

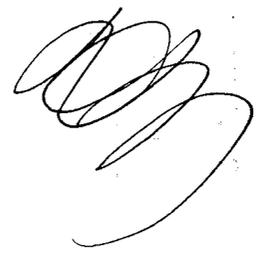

KATHLEEN PROCTOR
Deputy Prosecuting Attorney
WSB # 14811


Jessica Giner
Rule 9

Certificate of Service:

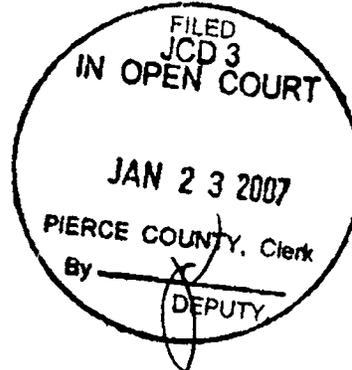
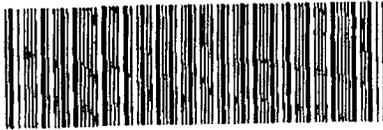
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

9/6/07 
Date Signature



APPENDIX “A”

Findings of Facts and Conclusions of Law



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

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 06-8-00789-9

vs.

KUHYAR SAJJADI

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

D.O.B.: 10/07/91

JUVIS#: 890220-06R001961

Respondent.

THIS MATTER having come on before the Honorable James Orlando, Judge of the above entitled court, for trial on December 13, 2006, upon an information charging the respondent with ASSAULT IN THE SECOND DEGREE; the respondent having been present and represented by KENT W UNDERWOOD and the State being represented by Deputy Prosecuting Attorney SUE L. SHOLIN, and the court having observed the demeanor and heard the testimony of the witnesses, having considered the admitted exhibits, and having considered the arguments of counsel and being duly advised in all matters, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

I.

That KUHYAR SAJJADI, age 15, is a juvenile, being born on 10/07/91.

Office of the Prosecuting Attorney
Juvenile Division
5501 Sixth Avenue
Tacoma, Washington 98406-2697
Telephone: (253) 798-3400

II.

That on April 25, 2006, an Information was filed charging the respondent with
ASSAULT IN THE SECOND DEGREE.

III.

That all relevant events occurred in Pierce County.

IV.

On or about December 15, 2006, the respondent did intentionally assault Jason Halter
by hitting him repeatedly in the head.

V.

The respondent thereby inflicted substantial bodily harm in that he caused bleeding
from Halter's nose, caused, swelling of Halter's face and nose, caused impairment of
Halter's breathing, and caused Halter considerable pain that lasted a substantial period of
time. Halter missed some school because of his injuries.

VI.

The respondent initiated the physical conflict by pushing Halter over as Halter sat in
a chair in class.

VII.

There is no credible evidence that Halter initiated the physical confrontation and even
the respondent did not testify that he feared, either subjectively or objectively, any physical
attack or harm from Halter.

VIII.

1
2
3 The respondent's actions in assaulting Halter far exceeded any threat he may have
4 perceived from Halter and the assault was an unreasonable response to any remarks Halter
5 may have made.

6 From the foregoing Findings of Fact, the Court makes the following Conclusions of
7 Law.

8 CONCLUSIONS OF LAW

9 I.

10 That the Court has jurisdiction of the parties and subject matter.

11 II.

12 That KUHAR SAJJADI is guilty beyond a reasonable doubt of the crime of
13 ASSAULT IN THE SECOND DEGREE in that, on 12/15/05 he did intentionally assault
14 Jason Halter and thereby recklessly inflicted substantial bodily harm.

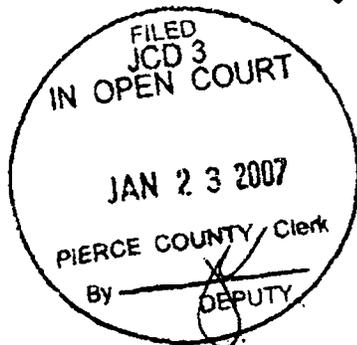
15 III.

16 That the State has disproved self-defense beyond a reasonable doubt.

17 IV.

18 That the respondent was the first aggressor and he thereafter failed to withdraw from
19 the conflict sufficiently to reverse the roles of himself and Halter.
20
21

22
23 DONE IN OPEN COURT this 21 day of Jan, 2007.



JUDGE JAMES R. ORLANDO [Signature]

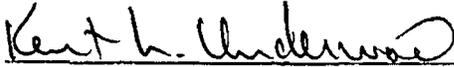
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Presented by: 

Deputy Prosecuting Attorney
WSB# 21332

Approved as to Form only:


Attorney for Respondent
WSB# 27250

sls

Office of the Prosecuting Attorney
Juvenile Division
5501 Sixth Avenue
Tacoma, Washington 98406-2697
Telephone: (253) 798-3400