

FILED
Court of Appeals
Division II
State of Washington
1/18/2018 3:43 PM
NO. 50136-8-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

CHARLES EDWARD PASCHAL, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.13-1-00502-6

BRIEF OF RESPONDENT

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RESPONSE TO DIRECT APPEAL

RESPONSE TO ASSIGNMENTS OF ERROR

- I. **The trial court properly sentenced Paschal on remand to 360 months for Assault in the First Degree.**
- II. **The State does not intend to seek appellate costs if it substantially prevails on appeal.**

STATEMENT OF THE CASE

A jury convicted Paschal of Assault in the First Degree, Rape in the First Degree, and Unlawful Imprisonment after he brutally assaulted and raped the mother of his children over several hours, in the presence of his children, and held her against her will. The jury also returned special verdicts finding that the crimes were aggravated domestic violence offenses. Original CP 131-35.¹ The trial court sentenced Paschal to an exceptional sentence of 360 months on the Assault in the First Degree conviction, 360 months on the Rape in the First Degree conviction to run concurrent to the Assault conviction, and 366 days on the Unlawful Imprisonment, also to run concurrent to the other convictions. CP 30. At the sentencing hearing, the trial judge stated in rendering her sentence, “if

¹ This appeal involves two separate records. The State references the transcript and clerk’s papers from Paschal’s first direct appeal as the record has been transferred from that appeal to this current appeal. The clerk’s papers from the first direct appeal are cited as “Original CP [page number],” and the clerk’s papers from this appeal are cited as “CP [page number].” The verbatim report of proceedings from the original trial are cited as “Original RP at [page number]” and the verbatim report of proceedings from the resentencing are cited as “RP [page number].”

this case were sentenced just on Rape I or just on Assault I, the sentence would be the same. It's 360 months. That's the sentence of the Court." Original RP at 926.

Paschal appealed his convictions and this Court reversed his conviction for Rape in the First Degree and affirmed his convictions for Assault in the First Degree and Unlawful Imprisonment. *See State v. Paschal*, 196 Wn.App. 1068 (2016) (unreported). On remand for resentencing, the trial court imposed the same sentence on the Assault in the First Degree conviction as it had initially done: 360 months. CP 11. At the resentencing hearing the trial judge stated, "my feelings the day that I sentenced you originally are the same today, that the 360-month sentence is appropriate." RP 16-17.

Paschal now appeals his sentence.

ARGUMENT

I. The trial court properly sentenced Paschal on remand to 360 months for his Assault in the First Degree conviction.

Paschal argues on his direct appeal that the trial judge acted vindictively in sentencing him on remand to the same sentence it originally sentenced him to on his first appeal. Paschal further argues the trial court violated the appearance of fairness doctrine in so sentencing

him. It is clear from a thorough review of the record at Paschal's original sentencing and at his sentencing on remand that the trial court gave Paschal the same sentence on his Assault in the First Degree conviction that it gave him in his original sentence. The trial court's actions were in no way vindictive nor did it violate the appearance of fairness doctrine. Paschal's claims fail and the trial court should be affirmed.

Initially, Paschal argues this Court should review the trial court's resentencing of Paschal under a de novo standard of review. Paschal argues his claim is one of constitutional magnitude and thus the appropriate standard of review is de novo. Generally, in reviewing a trial court's imposition of an exceptional sentence, this Court reviews whether the record supports the finding on the aggravating circumstances under a clearly erroneous standard, whether the reasons justify an exceptional sentence as a matter of law under a de novo standard, and whether the sentence is clearly excessive under an abuse of discretion standard. *State v. Law*, 154 Wn.2d 85, 93, 110 P.3d 717 (2005). The trial court in Paschal's case found that the jury found the current offense involved domestic violence and that it occurred within the sight or sound of the victim's minor children. CP 19. The trial court then entered a conclusion of law that an exceptional sentence above the standard range was warranted and justified based on the aggravating circumstance found. *Id.*

Paschal does not argue on this direct appeal of his resentencing that the record did not support the aggravating factor, nor does he argue the aggravating factor does not justify an exceptional sentence. Therefore typically, a challenge to the trial court's imposition of an exceptional sentence is reviewed for abuse of discretion as an appellant usually alleges the sentence was clearly excessive. *See Law, supra*, at 93. However, Paschal specifically denies he is claiming the sentence was clearly excessive. *See Br. of Appellant*, p. 7. Despite this denial, his claim that the trial court improperly sentenced him due to vindictiveness is clearly a claim his sentence was excessive.

Paschal attempts to frame this issue as one of constitutional magnitude based on the trial court's resentencing Paschal to what he claims is a higher sentence than what he was originally sentenced to. However, based on a comprehensive review of the entire record, including the original sentencing and not just the record designated by Paschal on this appeal, it is clear the trial court did not increase his sentence, but only maintained the exact same sentence for his Assault in the First Degree conviction as it originally imposed. Thus Paschal's claim of vindictiveness makes little sense and it is clear the crux of his complaint can only be that the sentence was excessive. As such, a *de novo* review is inappropriate and the propriety of the trial court's imposition of an exceptional sentence

should be reviewed under the typical abuse of discretion standard of review. However, under either standard of review, this Court should affirm Paschal's sentence as there was clearly no violation of the appearance of fairness doctrine and the trial judge did not act vindictively.

Due process requires a fair tribunal preside over a defendant's trial. *State v. Madry*, 8 Wn.App. 61, 68, 504 P.2d 1156 (1972). Fairness requires both an absence of actual bias and the appearance of fairness. *See id.* However, "[w]ithout evidence of actual or potential bias, an appearance of fairness claim cannot succeed and is without merit." *State v. Post*, 118 Wn.2d 596, 619, 826 P.2d 172 (1992). The test for whether there is a violation of the appearance of fairness doctrine is whether a "reasonably prudent and disinterested observer would conclude [the defendant] obtained a fair, impartial, and neutral trial." *State v. Dominguez*, 81 Wn.App. 325, 330, 914 P.2d 141 (1996) (citing *State v. Bilal*, 77 Wn.App. 720, 722, 893 P.2d 674, *rev. denied*, 127 Wn.2d 1013 (1995) and *State v. Brenner*, 53 Wn.App. 367, 374, 768 P.2d 509, *rev. denied*, 112 Wn.2d 1020 (1989)).

Paschal presents no evidence of actual or potential bias on the part of the trial judge who presided over his resentencing. Paschal argues the evidence of the trial judge's potential bias is the trial court's vindictive increase in Paschal's sentence on remand. Without explanation, Paschal

assumes the fact of an increased sentence and bases his argument on this presumption. Paschal's presumption is flawed and is without any actual factual support. A review of the record below shows that Paschal received the exact same sentence on the Assault in the First Degree conviction that he received at his first sentencing. *Compare* CP 11 and CP 30. Furthermore, it is clear from the court's comments at the original sentencing hearing that the trial court's imposition of the 360 months sentence was based more on the Assault conviction than the Rape conviction (which was subsequently reversed by this Court), and that the sentence would be the same whether Paschal faced sentencing on either Assault in the First Degree or Rape in the First Degree or both. Original RP at 925-27. The trial court made this explicitly clear by stating: "If this case were sentenced just on Rape I or just on Assault I, the sentence would be the same. It's 360 months. That's the sentence of the Court." Original RP at 926. Paschal's claim on this appeal that his sentence of 360 months on the Assault in the First Degree conviction upon remand is an increase of his original sentence is baffling. The judgment and sentence from the original sentencing shows 360 months imposed on the assault conviction, running concurrent to the rape conviction, and the trial court's explicit statement at sentencing that its sentence was on the assault alone and on

the rape alone disproves Paschal's current contention beyond a shadow of a doubt. CP 30.

Paschal's claim that his increased sentence shows the trial judge's potential bias thus triggering the appearance of fairness doctrine is without any merit. As Paschal has failed to show any evidence of actual or potential bias on the part of the trial judge, Paschal's claim of a violation of the appearance of fairness doctrine "cannot succeed and is without merit." *See Post, supra* at 619. The trial court properly sentenced Paschal to an exceptional sentence based on the jury's finding of an aggravating factor and the trial court's conclusion that that finding justified the imposition of an exceptional sentence. The trial court made clear at his original sentencing that she would impose the exact same sentence whether Paschal was convicted of only Assault or only Rape as that was the sentence the trial court believed was appropriate. Paschal does not now claim this sentence was clearly excessive or an abuse of the trial court's discretion, and there is no reason to believe it was. The trial court acted appropriately, without any bias or interest for or against Paschal. Paschal's claim is without merit. The trial court's sentence should be affirmed.

II. The State will not seek appellate costs.

If the State substantially prevails on appeal it will not seek appellate costs.

CONCLUSION

The trial court did not act vindictively in sentencing Paschal to the same sentence originally imposed upon remand. Paschal's claim that the trial court acted vindictively and violated the appearance of fairness doctrine are without merit. Paschal's sentence should be affirmed.

RESPONSE TO PERSONAL RESTRAINT PETITION

I. Identity of Respondent

The State of Washington is the Respondent in this matter. Charles Paschal is the petitioner and is currently restrained by the judgment entered in Clark County Cause No. 13-1-00502-6 for convictions of Assault in the First Degree Domestic Violence and Unlawful Imprisonment Domestic Violence.

STATEMENT OF THE CASE

The defendant, Charles Paschal, brutally assaulted his girlfriend and the mother of his two children, Katherine Martin. While their seventeen month-old son slept downstairs and the couple's five year-old daughter, along with the Paschal's seven year-old daughter from a previous relationship, watched television and eventually slept in an adjacent room, Paschal pummeled Katherine repeatedly with closed fist punches to the face and head, raped her, and ultimately strangled her to the

point where she felt she would die. Katherine tried to escape but was yanked away from the dead-bolted front door by her hair. The violent attack lasted several hours before Katherine was able to escape, naked except for a bra, out a back door when Paschal became distracted by their children who had opened the bedroom door in response to Katherine's screams. Despite the vicious beating she received, Katherine's primary concern was for the children she was forced to leave behind in her attempt to save her life. Following Katherine's escape, the defendant fled the home with the two young girls while abandoning the infant. Katherine's infant son was found alone in the house by police. Katherine's daughter and step-daughter were found unharmed several hours later.

A. TRIAL TESTIMONY

1. Katherine Martin

Katherine Martin and Charles Paschal were involved in a dating relationship for six and a half years. Original RP at 237. They have two children together. Original RP at 236. Katherine is a CPA at a Vancouver accounting firm. Original RP at 236. At the time of this assault, Katherine and Paschal's daughter was five and their son was seventeen months old. Original RP at 236, 273. Katherine described the relationship as rocky. Original RP at 237. They had an altercation about three and a half years prior to this assault, in which Paschal hit Katherine in the face three times

and broke her nose. Original RP at 238. She went to the hospital for that injury but left before treatment could be provided. Original RP at 239. She preferred to deal with it on her own. Original RP at 239. Following that incident Paschal was very apologetic, and they went on with their lives. Original RP at 243.

Katherine owns a house. Original RP at 245. On March 16, 2013, Katherine and Paschal discussed getting back together and the possibility of Paschal moving in. Original RP at 245. They also discussed Paschal working out of the home as a barber, and went to Ikea that day to purchase items for the business. Original RP at 245. That evening, Paschal brought his daughter from a previous relationship, Charlise, to the house. Original RP at 245-46. Charlise and Chanelle, Katherine and Paschal's daughter, were making spaghetti and hot dogs. *Id.* Katherine went back and forth between the upstairs, where the children were, and downstairs where Paschal was setting up his barber business with the items from Ikea. Original RP at 246. Paschal became angry with Katherine for going upstairs to be with the kids, wanting her to be downstairs with him. Original RP at 246. Katherine recalled a lot of arguing. Original RP at 246. Her next memory was being upstairs on the couch, but she couldn't recall why they both ended up in the living room. Original RP at 246-47. The girls were in the upstairs master bedroom and Katherine's son was

asleep downstairs. Original RP at 247. If the girls were to open the master bedroom door, they would see into the dining room, kitchen, and living room. Original RP at 247. All of the children were within earshot of things occurring in the living room, dining room, or kitchen. Original RP at 248. The home is not that large. *Id.*

The girls were watching a movie in the master bedroom. Original RP at 248. Katherine recalled that she and Paschal were still arguing (although she can't recall what about), and that Paschal slapped her on the face with an open hand. Original RP at 248-49. Katherine was shocked. Original RP at 249. She expected it to end at that, "but that didn't happen." Original RP at 249. Katherine looked at Paschal and he didn't look like himself. Original RP at 249. "[H]e didn't even look like himself or that there was anything even behind his eyes. It was an absolutely evil person. And I knew that...that he was going to hurt me." Original RP at 249. Katherine said that after that, "it happened so fast, it went from the slap, to right away closed fist hitting me in my face and my head." Original RP at 249. Katherine and Paschal had been drinking on the couch prior to the assault. *Id.* Paschal was drunk. Original RP at 250.

Paschal punched Katherine with a closed fist all over her face, head, and the back of her head. Original RP at 250. It was constant, and there were too many blows to count. Original RP at 250. Paschal would

walk away for a few seconds, giving Katherine a “break,” and he would pace and say “All I wanted to do was love you. All I wanted to do was love you.” Original RP at 250. Then he would come back and resume the assault. *Id.*

Katherine begged him to stop, telling him she loved him. Original RP at 251. She wanted to placate him with pledges of her love. *Id.* She begged Paschal to call 911 because she was hurting so bad. *Id.* Katherine said “I’d never been hurt this bad and I knew with all of my head stuff, something was wrong.” *Id.* The pain was all over her head, and she could feel the blood coming down her face.” *Id.* She just wanted it to end. *Id.* But it didn’t.

At one point, perhaps because the children made a noise, Paschal got up and walked away. Original RP at 252. She recalled thinking that she had to get to the front door but she couldn’t get there fast enough. *Id.* Paschal reached her before she got to the door and yanked her back by her ponytail. *Id.* Paschal began banging her head into the stairs. *Id.* Paschal pulled her up the stairs and into the kitchen. *Id.* Katherine’s impression was that because there was so much blood, Paschal took her the kitchen to clean her off to avoid ruining the carpet. *Id.*

Paschal handed her a rag and told her to hold it to her face. Original RP at 253. She was bleeding from her nose and possibly

elsewhere, and was in excruciating pain. *Id.* Katherine realized that her begging was not going to get Paschal to stop, and she realized this was now a life-or-death situation. *Id.* She felt determined to survive. *Id.*

Paschal would walk and pace during the “breaks.” *Id.* She couldn’t escape during the breaks, however, because she was helpless and her body felt so heavy. Original RP at 254. Following the episode in the kitchen where Paschal had her wipe off her face, they ended up back in the living room. *Id.* Katherine can’t remember how they got there. *Id.* They were on the floor in front of the couches. *Id.*

As Katherine bled with a towel in her hand, Paschal demanded she perform oral sex on him. Original RP at 255. Paschal was trying to become erect by rubbing his penis against her, but when that didn’t work he wanted her to put his penis in her mouth. *Id.* She was not free to move. *Id.* He forced her to put his penis in her mouth. Original RP at 256. He also hit his penis against her cheek. *Id.* Katherine actually felt relief during the rape, because she felt it might be an opportunity to appease Paschal, and because she welcomed the break from the beating and the pain. *Id.* She felt this was a break where she could “get some strength.” *Id.* He was hitting her during this time, but “it wasn’t as intense.” *Id.* He was pulling on her face, opening up her mouth and forcefully pushing his penis in her mouth. *Id.* She doesn’t recall him saying anything during this “portion.”

Original RP at 257. He did not strangle her during this episode. Original RP at 289. He did not ejaculate. Original RP at 257.

Once this episode ended, Paschal became enraged and dragged her from in front of the couches to the dining room. *Id.* Once in the dining room Paschal put Katherine into a wrestling-type hold. Original RP at 258. Katherine doesn't know what the move was, only that its purpose was to strangle her. *Id.* She was on her stomach, face down, and Paschal had his legs wrapped around her and an arm wrapped around her neck. *Id.* She struggled against him. Original RP at 259. Katherine couldn't speak, but Paschal repeatedly said [I'll] rape you, kill you, and take all your money." *Id.* Katherine described him saying it as though it was a mantra. *Id.* While strangling Katherine, Paschal also put his hands over her mouth and her nose to ensure she couldn't breathe. *Id.* Katherine recalled trying to bite his hand, but couldn't recall if she was successful. *Id.* Either way, it didn't make Paschal stop. *Id.* Katherine described Paschal's enjoyment: "He would let go, and it was like this game where he would let go—I almost feel like he was like laughing, letting go, letting me get these couple breaths back and then to just go right back at it again and see me fight." *Id.* At this point Katherine felt she was going to die. Original RP at 260. She could think of no way to dissuade him. *Id.*

At some point during the torture by strangulation episode in the dining room, the girls opened up the bedroom door. *Id.* The kids were screaming. Original RP at 261. Paschal ran to the door, and when he did Katherine got up and fled to the patio door and escaped the home. *Id.* She knew it was her last chance to save her life. Original RP at 262. Because Paschal had ripped off her clothes at some point prior to the rape, she was wearing only a bra when she fled. Original RP at 263. As she fled into the back yard, she was in a state of panic, believing that Paschal was right behind her. *Id.* It was dark out and she had to jump over a wooden fence separating her yard from her neighbor's yard. Original RP at 264. She was screaming. *Id.* She sustained scrapes on her legs. *Id.* She came upon another cyclone fence, scaled it as well, and she was banging on the house and screaming. *Id.* She again sustained scrapes. Original RP at 265. She urinated on herself during her escape. Original RP at 301. She left bloody handprints sprawled across the house. Original RP at 264. No one came to her aid, so she ran through their gate and ran a block and a half until she found a house with a light on. *Id.* She screamed for help and someone answered the door. Original RP at 265. Katherine felt "like I was finally free. Like they saved me and I could just lay there and not be scared." *Id.* Her relief was very short lived, as she recalled that her kids were still at the house with Paschal. Original RP at 266.

During the 911 call, made by Ruslan and Ludymilla Deynega, the neighbors who answered her plea for help, one of the first things relayed by the Deynegas, after telling the 911 operator that Katherine was bleeding, was that “she’s got three kids in some house. I have no idea what she’s saying.” Original RP at 268. When Katherine is put on the phone with 911, she immediately began to relay her address and said “I have three kids in the house. They’re in extreme danger.” Original RP at 269. When asked by the dispatcher what happened, Katherine said, “He is insane and it’s my children’s father and he wants me dead. I am beat up. I am beat up and extremely beat up.” *Id.* After identifying Paschal as her assailant, Katherine lost consciousness. *Id.* Ruslan Deynega told the dispatcher she was “half naked and beat up.” Original RP at 270. Ruslan told the dispatcher “[h]er face is all bloody. Her—she’s got—her eyes on both—black eyes and her—out of her nose and out of her lips.” *Id.*

When Katherine regained consciousness and was returned to the phone the dispatcher asked her if Paschal had any weapons. Original RP at 272. An obviously confused Katherine replied, “There’s a weapon—my kids.” *Id.* When asked how old her kids are she initially said she had a “17 year-old daughter,” but then clarified it was a 17 month-old baby, as well as a five year-old and a seven year-old. *Id.* Katherine said Paschal had held her hostage for hours and beat her for hours. Original RP at 273.

Then she begged the dispatcher, “Please help my kids.” *Id.* Ruslan said, “This is shocking. Can you have somebody here quick?” *Id.* At that point Ruslan tries to comfort Katherine, who said she felt “horrible.” Original RP at 274. Ruslan assured her he would protect her and she was in good hands. *Id.* Katherine again wailed “But I need my kids. I need my kids.” *Id.* Ruslan assured her the police would rescue her kids. *Id.* Ruslan described Katherine as hysterical, talking about her kids. Original RP at 275. The 911 call ended shortly thereafter because the ambulance arrived. Original RP at 276.

Katherine remained in a continued state of panic about her kids. Original RP at 277. She thought that if Paschal had gone that far with her, that he must be doing something to her children. *Id.* When she was placed in the ambulance, she recognized one of the EMTs as the husband of one of her best friends. *Id.* He, however, didn’t recognize her. *Id.* She had to call out his name before he realized it was her. *Id.*

At the hospital, Katherine finally learned that her son, Eli, had been left alone in the house but that Paschal had fled with Chanelle. *Id.* During her conversations at the hospital Katherine remained very upset, trying to remember any place Paschal might have taken Chanelle so she could assist police in finding her daughter. Original RP at 278. Katherine

recalled that they called in a specialized nurse to look at every inch of her.

Id.

Katherine missed two weeks of work and had pain to the touch all over her body. Original RP at 280. Her extensive injuries are depicted in each of the exhibits listed in the supplemental designation of exhibits.

During cross examination, Paschal asked Katherine whether she had told Deputy Kennison that Paschal had never struck her before, and she confirmed that she likely said that and that it was something she would have trained herself to say. Original RP at 287. Paschal also questioned Katherine about statements she made to Detective Luvera, even though Luvera had not yet testified and the court had not yet been asked to rule on whether Luvera could testify about Katherine's statements. Original RP at 287-89. Paschal elicited that Katherine told Detective Luvera that she (Katherine) had bitten Paschal's hand, which caused him to remove his hand from her mouth. Original RP at 287. Paschal also elicited that Katherine may have told Luvera that Paschal shoved his penis into her gums and that it was erect when he slapped it against her face, contrary to her testimony on direct about his penis not being erect. Original RP at 288. Paschal also elicited that Katherine told Luvera that she considered biting Paschal's penis during the rape. Original RP at 289. She abandoned the

thought when she considered that compliance during the rape might appease him. *Id.*

Paschal also questioned Katherine about a statement she made to the SART nurse (Nurse Jorgensen), even though Nurse Jorgensen had not yet testified and the trial court had not been asked to make a ruling on the admissibility of Katherine's statements to her. Paschal asked Katherine whether she told Jorgensen she had caused Paschal to assault her because of something she said. Original RP at 290. Katherine went home from the hospital the following morning, and her father helped her clean up the blood in her house. Original RP at 641.

2. Deputy Kennison

Deputy Kennison of the Clark County Sheriff's Department responded to the 911 call in the early morning hours of March 17, 2013. Original RP at 155. He spoke to Katherine while she was in the ambulance. Original RP at 157. She was panicked, scared, and in a great deal of pain. RP 157. It appeared to Kennison that Katherine had been punched repeatedly. *Id.* Her face was swollen and her eyes were swelling shut. Original RP at 158. She had blood coming out of her mouth, her nose, and possibly her eye. *Id.* Her face was "completely red and swollen." *Id.* Katherine told Deputy Kennison that she had been at home with her long-term boyfriend and father of her children, Paschal. *Id.* While sitting

on the couch having a drink Paschal reached over and punched her in the face repeatedly, and he eventually mounted her. *Id.* He continued to punch her in the face as he straddled her. *Id.* He tried to cover her nose and mouth with his hand to prevent her from breathing. Original RP at 159.

She told Kennison she felt as though she would suffocate and die. *Id.* She said she'd bitten his hand. *Id.* She said she attempted to escape by running out the front door but he had yanked her back by her hair and continued punching her. *Id.* She told Kennison she was eventually able to escape out the back door, scaling several fences before reaching the house where she eventually got help. *Id.* Katherine was concerned about her children and step-child; in fact it was her primary concern. Original RP at 160.

Following his conversation with Katherine, Kennison went with other deputies to Katherine's home. Original RP at 161. They found blood on a back door and their concern for the children heightened. *Id.* The front door was unlocked, and they entered the home after knocking and announcing.

Id. When nobody appeared in response they did a sweep of the house.

Original RP at 162. The deputies found the television on in the living room and signs of a disturbance, such as couch cushions and clothes on the floor and things tipped over. Original RP at 162-63. There was a stove burner on, lit up bright orange. Original RP at 163. Downstairs, on a bed in a young girl's room, Kennison found an infant by himself, with a bottle

of milk. *Id.* Kennison stayed with the infant for about fifteen minutes until another deputy relieved him, and proceeded to the hospital to stay with the victim until detectives could arrive. Original RP at 163-64. He arrived at the hospital at about 4:20 in the morning. Original RP at 166.

When he re-contacted Katherine at the hospital, her daughter and step-daughter were still missing and Paschal remained at large. Original RP at 167. She was still afraid for her safety as well as the safety of her children. *Id.* During this second conversation at the hospital Katherine revealed that Paschal had raped her by forcing his penis into her mouth. *Id.* Kennison was asked about what injuries he observed on Katherine, and he described that her swelling had increased, one of her eyes was nearly swollen shut, there was still blood around her nose and mouth, and she had scratches on her legs from when she scaled the fences. Original RP at 168. The prosecutor asked, without objection, whether these visible injuries appeared consistent with her account of how she received them, and he said they were. *Id.*

During cross exam, Paschal elicited additional statements that Katherine made to Deputy Kennison. In particular, Paschal asked Kennison whether Katherine told him that she bit Paschal on the hand several times, to which Kennison replied yes, she told him that she bit Paschal on the hand “repeatedly.” Original RP at 173. Paschal also asked

Kennison several questions about what Katherine told him about what she and Paschal had to drink that night. Original RP at 171-72. On re-direct, because Paschal had asked several questions about the drinking, the prosecutor asked what Katherine had told him about the defendant's alcohol consumption, and Kennison relayed Katherine's statement that Paschal had been taking swigs of liquor during the assault. Original RP at 175.

3. *Paul Bustamante*

Paul Bustamante is an EMT with AMR ambulance services. Original RP at 198. He was dispatched to this 911 call at 3:00 a.m. on March 17, 2013. *Id.* He arrived at the Deynega residence and contacted Katherine. Original RP at 201. Katherine had obvious injuries to her face and extremities. *Id.* She had trauma to the face, eyes, and lips, there was dried blood from her nose. Original RP at 202. The blood was "very dried," and needed to be cleaned off because it was interfering with her ability to breathe through her nose. Original RP at 204-05. It was very painful for her to open her eyes. Original RP at 204. She was distraught, and kept referring to having left her children at home. Original RP at 202. It was "very much her primary concern." *Id.* Bustamante called dispatch to upgrade the police response to lights and sirens because Katherine was reporting that she had been assaulted and was forced to leave her children

at home. Original RP at 203. She was so worried about her children that it was interfering with her ability to answer his necessary medical questions. *Id.* Katherine told Bustamante that she had been assaulted by her boyfriend for several hours before finally escaping. Original RP at 205. She said she'd been held against her will and repeatedly struck in the face. Original RP at 206. She said she'd been strangled and that Paschal had placed his hand over her mouth to prevent her from breathing. Original RP at 207. She also said he'd held her to the ground and forced his penis into her mouth. *Id.* She escaped when finally presented with the opportunity, as she believed it was the only way she could get help for her and her children. Original RP at 206. Katherine told him that throughout the assault, Paschal was drinking from a liquor bottle. Original RP at 208. Bustamante was asked, without objection, whether the injuries visible on Katherine were consistent with her account of how she received them, and he said they were. Original RP at 208-09. After fifteen minutes of treating Katherine she alerted him to the fact that they knew one another. Original RP at 211. Her injuries had rendered her completely unrecognizable. *Id.* Bustamante did not note any odor of alcohol coming from Katherine. Original RP at 209. They arrived at the hospital at 3:46 a.m. Original RP at 210. During cross exam, Paschal elicited several additional statements from Katherine, including that she reported being punched with a closed

fist. Original RP at 215. Paschal also elicited that Katherine had rated her pain as four on a scale of one to ten and did not report headache despite her claim of closed fist punching. Original RP at 213-15.

4. Christopher Thomas

Christopher Thomas, another EMT with AMR, responded to this 911 call with Mr. Bustamante. Original RP at 221-22. Katherine was very distraught when the ambulance arrived. Original RP at 223. Thomas and Bustamante needed to determine the mechanism of her injury in order to treat her but her monomaniacal fear for her children was impairing their ability to treat her. Original RP at 224. Katherine told Thomas that she was punched multiple times several hours prior, and he was concerned about the visible trauma to her head. Original RP at 226.

5. Sgt. Allais

Sgt. Allais supervises the Major Crimes detective unit for the Clark County Sheriff's Office. Original RP at 445. He testified that he received a call about this case from a patrol sergeant at 3:58 a.m. on March 17, 2013. Original RP at 447. He received information that there had been an assault, and the perpetrator had left with the child he had in common with the victim. Original RP at 448. Allais traveled to Peace Health hospital to contact the victim. *Id.* He arrived at approximately 4:45 a.m. *Id.* Allais

was asked if he was able to make any initial observations of Katherine Martin. *Id.* He replied, without objection:

She had—she was bloody...[S]he had blood everywhere—I think on her lip—appeared to have been strangled. I have done this for 26 years, and as I looked at her I was thinking this is probably the worst domestic assault that I’ve seen. Of course, she was crying, very upset about where her daughter was.

Original RP at 449.

During cross examination Allais retracted his comment about this being the worst domestic case he’s seen. Original RP at 494. He admitted that he had investigated far worse cases, including a domestic violence homicide committed with a hammer. *Id.* He also appeared surprised at having made the remark, stating “did I say worst?” Original RP at 493.

Allais testified that as he spoke to Katherine, her primary concern was the location of her missing daughter, not herself. Original RP at 449. Allais was also asked about why it appeared to him that Katherine had been strangled, and he replied that her neck was red and that he saw petechiae. Original RP at 450. Defense counsel objected to the latter remark, but the court overruled the objection, stating that it was an observation. *Id.*

6. *Detective Luvera*

Detective Beth Luvera is a domestic violence detective with the Clark County Sheriff's Department. Original RP at 312. She has received over 350 hours of training in domestic violence. Original RP at 313. She received a call from Sgt. Allais at about 4:15 a.m. on March 17, 2013, instructing her to meet with Katherine Martin at the hospital. Original RP at 317. Luvera arrived at the hospital at about 5:30 a.m. Original RP at 318. Luvera saw a "tremendous" amount of injury to Katherine's face. *Id.* Her left eye was completely swollen shut. RP 318. She had dry, crusty blood on her lips. *Id.* There was blood on her nose, and it appeared as though blood had dripped out of her right eye. *Id.* The entire white of one of Katherine's eyes was blood red. *Id.* Luvera was asked if she observed the presence of petechiae, and she said she did. Original RP at 319. Luvera saw the petechiae in Katherine's right eye, as well as behind one or both ears. *Id.* She also believed it was present on Katherine's neck. *Id.*

Katherine was crying, very emotional and upset, and blurting things out. Original RP at 320. Katherine told her the following:

My legs wouldn't work. They had nothing left. I remember thinking if the kids could see me kick my legs, my kids could hear me and they'd open the door – saw me...He's a wrestler; he had me in a hold; I was able to bite his hand. I felt like I was going to die. It felt like it wouldn't end. I asked him, why are you doing this? And he'd hit me again.

He said, "I'm going to rape you, too." He took it out and put it in my mouth. And I wanted to bite it.

Id.

Katherine was sobbing as she related her story. Original RP at 321. Katherine told Luvera that they'd all been at the house and the girls were making dinner while Paschal worked in the garage. Original RP at 323. Paschal became angry because he felt Katherine was paying too much attention to the kids. *Id.* They also argued because Katherine did not allow smoking in her house but Paschal smoked anyway. *Id.* Katherine went upstairs to get away from Paschal. *Id.* He came up a short time later and began cussing at her. Original RP at 324. He slapped her in the face. *Id.* Katherine said Paschal became angrier each time he hit her. *Id.* Katherine said Paschal took her clothes off. *Id.* She said he dragged her into the kitchen because he didn't want to get blood on the carpet. *Id.* She asked him to call 911. *Id.* Katherine was jumping all over the place in her scattered recitation of what happened. Original RP at 325. Katherine related her failed escape attempt, as well as Paschal's threats to rape and rob her. Original RP at 326. Katherine described receiving closed fist blows. Original RP at 327. Katherine also described Paschal's "breaks," where he would pace and say "I just wanted to love you." Original RP at 328. Katherine also described Paschal drinking Bacardi rum throughout

the assault. *Id.* Katherine told Luvera that she tried to appease Paschal, to no avail. Original RP at 328-29. Katherine described Paschal using a wrestling move on her to put her in a chokehold. Original RP at 336. Katherine described him placing his hand over her mouth and nose. *Id.* Finally, Katherine described Paschal forcing his penis into her mouth. Original RP at 339. Katherine believed Paschal was going to kill her. Original RP at 340. Luvera testified that the injuries she observed on Katherine appeared to be consistent with her account of how she received them. Original RP at 341.

7. *Nurse Ruef*

Anna Ruef is an ER nurse at Southwest Washington Medical Center and was working the night Katherine was admitted. Original RP at 536. Ruef testified that Katherine appeared frightened, very tearful, and was crying. Original RP at 537. Katherine described being held captive for two hours and beaten severely. *Id.* Ruef observed multiple abrasions to the back of the head and on the face as well as bruising all over the body. *Id.* Ruef recalled being pretty shocked when she saw Katherine. Original RP at 538. Katherine's eyes were swollen shut. *Id.* It was the most severe case of domestic violence she has seen in the ER throughout her practice. *Id.*

8. *Dr. Eggen*

Dr. John Eggen was on duty the night of March 17, 2013 at PeaceHealth Southwest Hospital². Original RP at 510. Dr. Eggen treated Katherine Martin and testified she arrived at the emergency room at 4:00 a.m., and he saw her at 6:00 a.m. *Id.*

Dr. Eggen observed scattered bruising on Katherine's body. Original RP at 513. He observed injuries to Katherine's head and ordered a CT scan. Original RP at 517. He observed blunt force trauma to her face consistent with punching. Original RP at 518. He indicated this type of trauma would involve a number of separate blows. *Id.* The blows would have to be of significant force. *Id.*

Dr. Eggen went on to say that Katherine also suffered a broken nose. *Id.* This was confirmed by the CT scan. *Id.* The doctor indicated that it takes considerable force to break a nose. Original RP at 519. That is, you can't just slap somebody to break her nose. *Id.*

Dr. Eggen also described the mechanism of petechiae being a significant cutting off of blood. Original RP at 511. Dr. Eggen observed petechiae on Katherine's head and neck, caused by strangulation that cuts off blood supply. Original RP at 512. Dr. Eggen explains that petechiae is indicative of significant force and could include life threatening force to

² For clarity, the witnesses refer to the hospital by different names. The name of the hospital is PeaceHealth Southwest Washington Medical Center.

the airway. Original RP at 514. Katherine had a subconjunctival hemorrhage in her right eye. Original RP at 515.

Katherine told Dr. Eggen that she had been sexually assaulted, held captive, and hit in the face with a fist. Original RP at 520. Katherine described loss of consciousness. *Id.* Katherine was discharged at 11:00 a.m. that morning. Original RP at 521.

9. Nurse Jorgensen

Julie Jorgenson is a SANE nurse. Original RP at 618. She was called out at 6:19 and arrived at the emergency department at 7:10. Original RP at 621. She received the report from the charge nurse. *Id.* Nurse Jorgenson indicated that she introduced herself to Katherine and made sure Katherine consented to the exam. Original RP at 622. Nurse Jorgenson noted that she had to take two pages to document all of Katherine's injuries. *Id.* She recalled that Katherine was tearful and upset. Original RP at 623. Katherine told Nurse Jorgenson that she had chomped on the defendant's hand during the attack. Original RP at 626-627. Jorgenson described Katherine's injuries as swelling on the back of the head with multiple red abrasions on the scalp and finger marks on the arms. Original RP at 632. Katherine had dirt and grass in her vagina and dirt in her anus. Original RP at 633. Jorgenson described Katherine's injuries as significant. *Id.*

10. Ruslan and Ludymilla Deynega

Ludymilla Deynega testified that Katherine came to her house naked. Original RP at 556. Katherine told Ludymilla that she had been held in her house but finally managed to escape. Original RP at 557. Katherine was scared and was pleading for help. *Id.* Ludymilla described seeing a lot of blood. *Id.* Ludymilla said Katherine passed out a couple of times and expressed concern for her children. Original RP at 559. Katherine told the Deynegas she was raped. Original RP at 564.

Ruslan Deynega described Katherine as bloody and injured. Original RP at 566. He said Katherine was hysterical, saying “my kids” and “help”. Original RP at 567. Katherine told him she had been held captive by her boyfriend or husband. *Id.* Ruslan said Katherine was in shock and it was clear her primary concern was for her kids. *Id.* She had a bloody swollen face and dried blood on her legs. *Id.* Ruslan said Katherine faded in and out of consciousness. Original RP at 568. He said she did not appear intoxicated. *Id.*

11. Paschal

a. Direct Examination

Paschal testified in his defense. Paschal is an entertainment promoter, a barber, and a performer. Original RP at 684. He testified that he met Katherine at a club in Portland. Original RP at 683. Paschal said

he'd been a barber for 23 years, and had a large clientele in Portland and Vancouver. Original RP at 685. He testified he is able to make a good living, and contributed to the living expenses he ultimately shared with Katherine after they began living together. Original RP at 685-86. At the time of trial he was also doing studio recording and writing music. Original RP at 689. Paschal is also a former state champion wrestler from Oregon, and a trained fighter. Original RP at 705-06. He boasted that he knows how to handle himself in a fight. Original RP at 706.

Paschal admitted that the home in which he assaulted Katherine was her home, not his. Original RP at 690. He had contributed nothing to the purchase of the home. *Id.* On the day of the assault Paschal picked up his daughter Charlise and took her to Katherine's home. Original RP at 692-93. He claimed that when he arrived, Katherine was "impaired." Original RP at 693. Paschal was drinking throughout the night. Original RP at 695. While in the garage setting up his new barber shop, he and Katherine had a dispute about him smoking in the house. Original RP at 697. Paschal informed Katherine that in spite of her wishes that he not smoke in her house, he was going to do it anyway because he felt it inconvenient to have to go outside. *Id.* Why should he have to interrupt his work to go outside, Paschal asked? *Id.* Why should he have to keep going back and forth? *Id.* Katherine "copped a big attitude about it," and became

“real bossy.” *Id.* As a result, they argued throughout the night, according to Paschal. Original RP at 697-98. He felt that Katherine was being “petty” about the smoking in her home, and continued to be upset by his behavior. Original RP at 698-701.

Paschal finished his work at about midnight and went upstairs. Original RP at 701-02. Katherine kept “nagging” him. Original RP at 702-703. Katherine asked him to leave her home, but Paschal refused. Original RP at 704. He felt that because he had brought his daughter to the home he was entitled to remain in Katherine’s house regardless of her wishes. *Id.* Katherine continued “nagging” him. *Id.* Paschal claims that Katherine struck him. Original RP at 705. He testified he “shoved her back a little bit” and asked her to stop hitting him. *Id.* He claimed that after Katherine struck him a second time, he “struck her, like, five times with my back hand, pow, pow, pow, pow, pow.” Original RP at 706-07. He described them as hard strikes to the nose. Original RP at 707. Katherine began to bleed, getting her blood on the staircase as she reeled backward from the force. *Id.* Paschal told her “[S]ee? That’s what I didn’t want to do.” *Id.* 7. He then “helped” her to the kitchen floor so she wouldn’t get blood on the carpet. *Id.* He claimed that Katherine started spitting blood “everywhere,” and was “touching everything and spitting from side to side.” Original RP at 707-08. This would explain why the officers found blood throughout

this area of the house. Paschal “attempted to help her clean up.” Original RP at 708.

When Paschal went to wet the towel so he could continue helping her clean up, Katherine bolted for the door. *Id.* Paschal ran after her and stood in front the door, asking “why are you doing this? We have kids in here.” *Id.* Paschal testified she wouldn’t have been able to get out anyway because the door was deadbolted. *Id.* She walked back upstairs and he followed her. *Id.* He again asked her why “she” was “doing this.” *Id.* He told her he loved her. *Id.* Katherine wanted to call an ambulance, but Paschal would not allow it. Original RP at 710. He told her that he would take her to the hospital but that as a condition of him doing that, they needed to clean up the blood first because she was bleeding all over him. *Id.* The bleeding “wouldn’t stop,” and she had gotten blood on him when he was “helping her clean her nose up.” *Id.* He claimed that he removed his pants and his boxers in an effort to clean up and was moving toward the bathroom when he turned around to find that Katherine had taken her clothes off. *Id.* Then, “she jolted out the back door.” Original RP at 711.

At about this time his children heard the “boom, boom,” and they got up. Original RP at 712. Paschal did not explain what the “boom boom” would have been in this account of what happened. *Id.* He put his pants on, leaving the boxers on the floor, and went to the door and saw her

“running all out talking about help.” *Id.* Paschal returned to find the kids in the doorway of the bedroom, now claiming they awoke to the noise of the sliding glass door.” Original RP at 713. The children in the doorway were Chanelle and Charlise. *Id.* Paschal admitted at this point in his testimony that earlier in the evening, Katherine had tried to go into the bedroom where their infant son was sleeping to get away from him, but he apparently didn’t let her. Original RP at 714-15.

Paschal testified that he tried to comfort the now-awake Charlise and Chanelle because they were confused. Original RP at 715. He explained to the girls that “mommy hit me,” so he had to hit her back, and then she ran out the door. *Id.* He thought this would “comfort them.” *Id.*

Paschal decided that his primary concern at that point was for Charlise, and he had to get her “back to her mother.” Original RP at 716. “That’s the only thing that was in my mind was getting my oldest daughter back to her mother.” *Id.* He went to Katherine’s purse and took her car keys because Katherine left without her car. *Id.* He also took her phone because he couldn’t find his own phone, so he felt entitled to take hers. Original RP at 716-17. During the search for his phone, however, he caused a mess by throwing couch cushions on the floor and knocking over a Coca-Cola bottle, thereby explaining the mess the police found on the floor. Original RP at 716. He “took it upon” himself to grab the girls, but

not his infant son, and leave the house. Original RP at 717. He reiterated that he wanted to get Charlise “safely to her mom’s house.” *Id.* Paschal never explained why his intense concern for Charlise did not extend to Chanelle or his infant son. *Id.* He used Katherine’s car because his cousin had his car. Original RP at 718. He did not explain how it was, then, that he picked up Charlise at 6:30 the prior evening and drove to Katherine’s house. Original RP at 692.

After arriving at Charlise’s mother’s house, Charlise’s mother calmed the girls down and he laid down to “chill.” Original RP at 719-20. It was about 2:00 a.m., according to Paschal. Original RP at 720. At 3:00 a.m. a call came into Katherine’s phone, but he elected to ignore it. *Id.* After sleeping through the night Paschal woke up and “had a feeling the police” might be at Katherine’s house, so he decided to go back and “face the music, whatever it is.” Original RP at 721. He saw sheriff cars in the driveway, but didn’t alert anyone to his presence. Original RP at 721-22. Instead, he used the garage door opener and went inside through the garage. Original RP at 722. Inside the house, he was arrested. *Id.* He informed the officers that Katherine hit him first. *Id.*

b. Cross-examination

Paschal said Katherine was “controlling.” Original RP at 723. When she asked him not to smoke in the house, he did it anyway. *Id.* He

could have walked away from Katherine and gone downstairs while she was “nagging” him. Original RP at 724-25. But “there was no reason” why he should have to go downstairs. Original RP at 724. He didn’t go downstairs because he “didn’t want to.” Original RP at 725. Paschal admitted that after he pushed Katherine off him after she first struck him, according to his claim, he was able to talk to her and get her to disengage. Original RP at 726. But when she struck him again, he elected not to talk to her or merely push her, but to strike her five times in a row. Original RP at 727. He admitted that he struck her because he was angry with her, not because he needed to defend himself. *Id.* He was not scared of her, and didn’t fear for his safety. Original RP at 731. He hit Katherine five times because “I just don’t like getting hit.” *Id.* Paschal admitted that blood was pouring out of Katherine’s nose, so much so that it was getting into her mouth. Original RP at 728. Although Katherine wanted to call an ambulance, Paschal decided for her that that wasn’t what she needed. Original RP at 729. He declined the request. *Id.* He would take her to the hospital himself, according to him, because that was the better plan. *Id.* He admitted that after she had asked for medical help and been denied it by him, he blocked her from leaving the home. Original RP at 730, 733.

Paschal didn’t have time to get his boxer shorts back on because he wanted to get to the back door and see what Katherine was doing after she

succeeded in escaping, but he was not in a rush or a hurry. Original RP at 734. He just wanted to look at what she was doing in the backyard because he was curious, and it's "what anybody would do." *Id.* The prosecutor asked wouldn't "anybody" also call 911 when asked by someone who says they need help? Paschal replied "I didn't really feel that she was hurt that bad." *Id.* He didn't think she needed an ambulance, and thought that taking her to the hospital himself was "the best way to go." Original RP at 735. He reiterated that he only left the home to get his "daughter out the situation." Original RP at 736. He left his infant son in the home because "I thought [Katherine] was going to come back too. I didn't think she would be out there running crazy, you know, leaving her kids in the house." Original RP at 737. He added "I thought she would have more sense than that to run outside the house with no clothes on." *Id.* Asked why he didn't at least call 911 to come and get his abandoned infant son, he said "I really don't like 911 in my business." Original RP at 738. He testified that he wasn't really in a rush to get out of the house when he left it in disarray and without his son, but he was "just trying to get my daughter to a safe place." Original RP at 738-39. He admitted that after bloodying Katherine and leaving his son alone in her home, he felt it was okay to just "chill" because Katherine probably got help from someone

else. Original RP at 740. Paschal admitted he could have used Katherine's phone to call 911 but he "preferred not to." Original RP at 742.

Paschal admitted he sustained no injury during his assault on Katherine. *Id.*

c. Re-direct examination

Paschal is adamant he only hit Katherine five times. Original RP at 746. He never put her in a chokehold because he wouldn't use his skills outside the wrestling mat "unless he really has to." Original RP at 746-47. Katherine was just being "dramatic" that night. Original RP at 745, 747. Katherine caused her injuries herself. Original RP at 747-78.

PROCEDURAL HISTORY

Paschal was convicted of assault in the first degree, rape in the first degree, and unlawful imprisonment. Original CP 167. The defendant was given an exceptional sentence of 360 months on the assault and on the rape, to run concurrently. Original CP 170. Paschal appealed from his convictions, and this Court reversed his Rape in the First Degree conviction, but affirmed his convictions for Assault in the First Degree and Unlawful Imprisonment. *See State v. Paschal*, 196 Wn.App. 1068 (2016) (unreported). Upon remand for resentencing, the trial court resentenced Paschal on the Assault in the First Degree and Unlawful

Imprisonment convictions. Paschal received the same sentence for the Assault in the First Degree conviction on remand that he had received at his first sentencing: an exceptional sentence of 360 months. CP 19.

ARGUMENT AS TO WHY PETITION SHOULD BE DISMISSED

Paschal argues the state failed to present sufficient evidence at trial to support his Assault in the First Degree conviction. Specifically Paschal argues the State failed to present sufficient evidence that he intended to cause great bodily harm to the victim, and that his assault did not result in great bodily harm or “grievous bodily injury.” *See* Personal Restraint Petition, p. 8.

Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements were proved beyond a reasonable doubt. *State v. Hendrickson*, 129 Wn.2d 61, 81, 917 P.2d 563 (1996). When a defendant challenges the sufficiency of the evidence, the reviewing Court draws all reasonable inferences in favor of the State and interprets them most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The reviewing Court does not disturb the jury’s credibility determinations. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

The State charged Paschal with Assault in the First Degree alleging he had the intent to inflict great bodily harm on Katherine and assaulted her with force or means likely to produce great bodily harm or death. Original Trial CP 10; RCW 9A.36.011(1)(a). Great bodily harm is “bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.” RCW 9A.04.110(4)(c). As an initial matter, Paschal’s arguments that the victim’s injuries were “minor” or “superficial” (which the State vehemently disagrees with) are of no moment as he was not convicted of actually inflicting great bodily harm on her, only of using force or means likely to produce great bodily harm or death.

Paschal argues that there was no evidence he had the intent to inflict great bodily harm and that five slaps to the face could not produce great bodily harm, thus he clearly could not have had the intent to inflict such harm on the victim. Intent is established when a person acts with the objective or purpose to accomplish a result which constitutes a crime. RCW 9A.36.011; 9A.08.010. Intent to commit a crime may be inferred when a defendant’s conduct and the surrounding circumstances indicate such an intent as a matter of logical probability. *State v. Vasquez*, 178 Wn.2d 1, 8, 309 P.3d 318 (2013). This is true for intent to inflict great

bodily harm as well. *See State v. Ferreira*, 69 Wn.App. 465, 468-69, 850 P.2d 541 (1993). All the details of a case may indicate intent, including things such as the manner and act of inflicting the injury, as well as the nature of the relationship between the defendant and the victim and any prior threats of harm. *Id.* Whether intent to inflict great bodily harm is established depends on the facts of each case. *See State v. Gardner*, 522 S.W.2d 323, 324 (Mo.Ct.App. 1975), and *Flournoy v. State*, 124 Tex.Crim 395, 396, 63 S.W.2d 558 (1933).

In *State v. Pierre*, 108 Wn.App. 378, 31 P.3d 1207 (2001) the Court found that there was sufficient evidence to support the defendant's intent to inflict great bodily harm when the defendant kicked and stomped on the victim's head causing permanent brain damage. *Pierre*, 108 Wn.App. at 385-86. In the unpublished opinion of *State v. Rosales-Contreras*, 193 Wn.App. 1024 (2016),³ Division I of this Court evaluated whether there was sufficient evidence to show that the defendant, who punched the victim one time in the face, had the intent to inflict great bodily harm. There, the Court considered that the defendant was furious in the moments leading up to the assault; he was yelling and his face was tense, his eyebrows furrowed and his arms were crossed. *Rosales-*

³ GR 14.1 allows citation to unpublished opinions of the Court of Appeals issued after March 1, 2013 if designated as such by the citing party. This opinion is not binding authority on this Court and may be given as much or as little persuasive value as this Court sees fit.

Contreras, slip op. at 3. The defendant told the victim to get out of the way or he would punch her and when she refused he did punch her. *Id.* The Court stated that “[t]he force required to inflict the injury [the victim] suffered is indicative of the magnitude of harm Rosales-Contreras intended.” *Id.* at 4. The Court noted that the victim was in “unbearable pain,” and had a gap in her memory immediately after the punch, which was consistent with a momentary loss of consciousness consistent with severe force. *Id.* Based on these facts, viewing the evidence in the light most favorable to the State, the Court found there was sufficient evidence to show the defendant acted with intent to inflict great bodily harm. *Id.*

The circumstances surrounding Paschal’s assault on Katherine clearly show a rational jury could (and did) properly find he had the intent to inflict great bodily harm when he assaulted Katherine. The brutal assault Paschal inflicted on Katherine lasted several hours. He repeatedly punched her in the face, telling her he was going to rape her, kill her and take all of her money. During the several hour assault, Paschal also would place Katherine in a strangle hold, also covering her mouth and nose with his hand, and then release her for a few short moments to breathe, and then immediately place her back in the same strangle hold. Katherine’s injuries were extensive. A responding officer testified that based on her injuries it appeared to be one of the worst domestic assaults he had ever seen. A

nurse at the emergency department testified that the assault was the most severe case of domestic violence she had seen throughout her practice. The doctor who treated Katherine at the hospital testified that her face was very swollen, one eye was red from a subconjunctival hemorrhage, her nasal bone was fractured and that she had petechiae in her head and neck area. And perhaps most compelling on the subject of the extent of Katherine's injuries was the testimony from Katherine's best friend's husband. Mr. Bustamante testified that Katherine's facial injuries were so extensive that he did not recognize her.

As in *Rosales-Contreras*, the force required to inflict the injury Katherine suffered is indicative of the magnitude of harm Paschal intended. In his petition Paschal describes Katherine's injuries as "minor" and "superficial." However, her injuries were anything but. Her face was so swollen that her best friend's husband did not recognize her. Two professionals who have seen a lot of assault victims testified that the sight of her injuries made them feel it was the worst domestic violence case they had ever seen. Katherine suffered a hemorrhage in her eye and a broken nose. These injuries are not "minor" or "superficial." Furthermore, as the defendant assaulted Katherine he told her he was going to kill her and rape her. He assaulted her over the course of several hours, in front of their children. From the defendant's own statements, he had the intent to at

least inflict great bodily harm if not to kill Katherine. From the magnitude of force he used in his assault it is clear he had the intent to inflict great bodily harm. And from the length of time and manner in which he assaulted Katherine it is clear that he had the intent to inflict great bodily harm. In reviewing all the evidence presented at trial in the light most favorable to the State and in taking all reasonable inferences therefrom in favor of the State, any rational jury could have found, and one did in fact find, that Paschal had the intent to inflict great bodily harm when he assaulted Katherine. The State presented sufficient evidence to support Paschal's conviction for Assault in the First Degree. Paschal's petition should be dismissed.

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CONCLUSION

Paschal's claim that his conviction for Assault in the First Degree is not supported by sufficient evidence is meritless. The State proved all the elements of the crime beyond a reasonable doubt. Paschal's petition should be dismissed and his convictions affirmed.

DATED this 18 day of Jan, 2018.

Respectfully submitted:

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39710-8r

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January 18, 2018 - 3:43 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50136-8
Appellate Court Case Title: State of Washington, Respondent v. Charles E. Paschal, Appellant
Superior Court Case Number: 13-1-00502-6

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