

FILED
COURT OF APPEALS
DIVISION II

2018 MAR -7 AM 10:20

STATE OF WASHINGTON

BY CLD
DEPUTY

THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)	
)	NO. 50136-8-II
Respondent,)	[consolidated]
)	
V.)	APPELLANT'S REPLY TO
)	RESPONSE TO PERSONAL
CHARLES PASCHAL,)	RESTRAINT PETITION
)	
Appellant.)	

I. INTRODUCTION

COMES NOW, the Petitioner/Appellant, Mr. Charles Paschal, and hereby files the Reply to Response to the consolidated Personal Restraint Petition.

II. STATEMENT OF THE CASE

On September 19, 2017, Mr. Paschal moved the Court to consolidate his personal restraint petition with his pending appeal in the above-captioned case. The Appellant further moved to amend his personal restraint petition, making an additional argument after his initial-brief was filed. The new issue presented for review was whether there was sufficient evidence for the jury-

to find the aggravating factors that the alleged assault, and unlawful imprisonment occurred within the "sight or sound" of his minor children.

Here, Paschal submits that the Respondent has failed to address this issue in it's Response. Accordingly, since the State has failed to argue this point, the appellant moves the Court on the merits of his exceptional sentence, vacate, and remand to be sentenced within the standard range.

III. REPLY ARGUMENT

THE STATE HAS FAILED TO REBUT ITS PRESUMPTION
THAT THE EVIDENCE OF FIRST DEGREE ASSAULT
WAS INSUFFICIENT TO SUSTAIN A CONVICTION

In summary, Paschal argued in opening brief, that insufficient evidence supports his conviction for assault one because the State failed to prove beyond a reasonable doubt that he intended to cause great bodily harm to Katherine by slapping ² her five times in the face. [PRP, at p. 4]. A reasonable juror could not find that together, evidence of Paschal's words and actions would not indicated the intent to assault Katherine.

In reply, the Respondent attempts to paint a picture of an out-of-control defendant who assaulted Katherine over the course of several hours in front of their children. [Resp. Brief, at p. 44]. This argument is not supported by the medical evidence nor the record.

² The State's theory reflects that Paschal "punched" Katherine

Furthermore, the Respondent attempts to supplement the existing record that Katherine suffered a "broken nose" on the night in question. This argument is also without merit. [Resp. Brief, at p. 44]. To the contrary, the American Medical Response, ("AMR"), responded to a 9-1-1 call involving Katherine, who had injuries to her face. 3VRP[May 30, 2014], at 198, 201-202; 204. Katherine had abrasions to both legs and lacerations to her arms which were sustained when she climbed over multiple fences, and bushes with no clothing to protect her. 3VRP 208-209. No internal injuries or fractures were sustained - "basically bruises." 3VRP 218.

In its essentials, Katherine suffered no head, neck, or or back pain. 3VRP 224; no extreme injuries, 3VRP 225. No weapons were involved. 3VRP 225-26. As to the "broken nose," Katherine testified that she recalled a past incident three, and a half years ago, whereas, she allegedly suffered a "broken nose." 3VRP 238. Katherine admitted that she attacked Paschal first, and that she had purchased cocaine, and alcohol. 3VRP 248-49. When Katherine ran, and jumped over fences, she testified she could not see where she was going. 3VRP 262-63. She only sustained minor injuries. 3VRP 264.

Here, Paschal argues that the jury may not infer criminal intent from evidence that is patently equivocal. See-
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State v. Vasquez, 178 Wash.2d 1, 14, 309 P.3d 318 (2013).

"[I]nferences of intent may be drawn only 'from conduct that plainly indicates such intent as a matter of logical probability.'" Id., (quoting, State v. Bergeron, 105 Wash.-2nd. 1, 20, 711 P.3d 1000 (1985)).

Here, Paschal argues that the State failed to show "Great bodily harm," an element of Assault one. However, Assault two requires 'substantial bodily harm.'

The severity of Katherine's injuries was relevant to Paschals' charge of Assault one because the State failed to carry its burden of proving that the injuries Katherine suffered were temporary, rather than permanent, physical - injuries.

"[I]nferences based on circumstantial evidence must be reasonable and cannot be based on speculation." Vasquez, 178 Wash.2d at 16. A "modicum" of evidence does not meet this standard. Jackson v. Virginia, 445 U.S. 301, 320, 99 S.Ct. 2781, 61 L.Ed.2d 50 (1979).

In the instant case, none of the Respondents' cited cases are directly on point. Because the defense did not concede the issue of permanent bodily injury, the State was required to prove that Katherine's injuries were permanent. Since the State failed to prove that the severity of the injury was arguably consistent with first degree assault, Paschals' conviction cannot stand.

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IV. CONCLUSION

STATE OF WASHINGTON

Based on the foregoing reasons, Mr. Charles Paschal respectfully request that the Court grant his petition, vacate his Assault conviction, and remand with instructions to sentence to the standard range.

BY CLD
FOR IT

Respectfully submitted,

Charles Paschal
/s/ CHARLES PASCHAL
APPELLANT

V. CERTIFICATE OF SERVICE

I, CHARLES PASCHAL, certify that on MARCH 4, 2018, I filed with prison authorities, by First Class U.S. Mail, the above APPELLANT'S REPLY BRIEF, under the COURT OF APPEALS, DIVISION II, case #50136-8-II:

TO:

COURT OF APPEALS, DIV. II:
950 Broadway #300, M/S TB-06
TACOMA, WA., 98402-4454

RESPONDENT:

Rachael Rogers
Clark County Prosecuting Att. Office
P.O. Box 5000 Vancouver, Wa. 98666-5000

I certify that the foregoing is true, and correct, and MAILED on this MARCH 4, 2018.